

CJP files a PIL against Pandey's appointment as DGP Gujarat

SYNOPSIS AND LIST OF DATES

The present Petition is filed in public interest under Article 32 of the Constitution of India challenging the appointment of Shri P.C. Pandey as Director General of Police, State of Gujarat and seeking action against him under the applicable service rules.

Shri P.C. Pandey was the Commissioner of Police of Ahmedabad during the period of communal carnage in 2002. More than 700 persons died [official figures whereas others show a much higher casualty of 2,500] during this period in Ahmedabad. It has been established by various independent Tribunals and Fact finding bodies both national as well as international that Respondent No. 3 was at least partially responsible for allowing this carnage. Moreover, in the Gulberg Society holocaust where more than 34 persons including Ahsan Jafri, ex MP were burnt alive it is on record that Shri Pandey visited the area in the morning and promised reinforcements but did not do so and turned a complete blind eye to the murders. Specifically as the man in charge of the city of Ahmedabad, he told the trapped residents of Gulberg Society and dozens who had sought shelter, not to leave and escape to a safer destination, as he would send reinforcements. Instead, the attack from the mob doubled after he left. Similarly, even after the carnage, the police ensured that no proper complaints were registered and no arrests were made.

In respect of the Gujarat carnage the National Human Rights Commission came to the conclusion, both through its interim as well as final report that the police were subverting the investigations and strongly recommended that investigations be taken out of the hands of the State police and be handed over to the C.B.I.

Three of the seven investigations in respect of which NHRC gave this recommendation were in respect of brutal incidents which had taken place in Ahmedabad of which Shri Pandey was the Commissioner. This Hon'ble Court is presently seized of a number of matters in which C.B.I. investigation has been demanded including in respect of cases which took place in Ahmedabad during the tenure of Shri Pandey. In these cases it has been submitted by various Petitioners including some extremely prominent persons and organizations that Shri Pandey had actively connived with certain political forces to allow the carnage in Gujarat. It is noteworthy that four years after the ghastly carnage, no repentance or remorse has been shown by the administration or the state executive.

Shri Pande also appeared before the Nanavaty-Shah Commission of Inquiry inquiring into the carnage and in a shocking blot to his position, testified stating that he had 'loss of memory' about what had transpired.

During the tenure of the previous political party, Shri.Pandey was sent on deputation to the CBI. This appointment was challenged before this Hon'ble Court by the Petitioners when the present government gave an undertaking that he would not be handling any of the cases relating to the Gujarat riots of 2002.

In such a situation instead of taking action against Shri Pandey for dereliction of duty, if he is appointed to head *the* highest position in state of Gujarat, it will amount to violation of rule of law. The faith of the ordinary person, the victim survivors of the Godhra and post Godhra massacres will be seriously affected and the neutrality of the Gujarat police in investigating ongoing carnage cases will come under a cloud. In fact, his appointment it will amount to direct and /or indirect interference with the course of justice.

It is submitted that as more than 2000 cases relating to the riots were hastily closed by the Gujarat Government, this Hon'ble Court had ordered re-opening of the same and suggested fresh scrutiny under the supervision of the Director

General of Police who would then report to this Hon'ble Court. If the present appointment of Shri.Pandey is upheld, he would be advising the Advocate General about the cases in which he was directly involved thus defeating the entire purpose of appointment of that committee.

In any event, considering the fact that the Union Government gave an undertaking to this Hon'ble Court that Shri.Pandey would not be handling cases relating to the riots, the same is binding on the State Government as well. As the cases are pending at various stages at this time, if Shri.Pandey is allowed to function as the DGP of the State of Gujarat, the tampering of evidence to assist members of the police and senior politicians including some ministers cannot be ruled out.

The Petitioners point out that it was in February 2004 that Shri Pandey an IPS officer was deputed to the Centre and appointed to CBI for two years. In an unusual move, after the appointment to CBI had been successfully challenged and this Hon'ble Court had passed appropriate orders stating *inter alia* that Shri PC Pandey would have nothing to do with the Gujarat cases, Shri PC Pandey was taken back by the Gujarat government, to its cadre, in a promotion posting to the Director of the Anti-Corruption Bureau in February 2005 even before his completion of the two year tenure with the Centre. The attempt clearly appears to be, by the state of Gujarat, to violate the letter and spirit of the orders of this Hon'ble Court and the undertaking made before it.

The Petitioners are therefore filing the present writ petition.

27.2.2002	58 Hindus burnt and killed in S-6 coach of Sabarmati Express at Godhra.
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27.2.02	Vishva Hindu Parishad gives a call for Gujarat Bandh on
28.2.02	

27.2.02	At this time Shri Pandey is the Police Commissioner of Ahmedabad. Despite the call for Bandh and an extremely volatile situation, Shri Pandey makes only 2 preventive arrests in Ahmedabad city- both of whom were Muslims.
28.2.02 onwards	<p>Major carnage takes place in Ahmedabad and other parts of Gujarat. In Ahmedabad more than 700 persons are killed.</p> <p>On the request of late Shri.Ahsan Jaffri, Shri Pandey visits him in the morning and promises reinforcements. Until evening no reinforcements arrive, Shri Jafri and 34 others [official figures, unofficial are over 55] are killed in Gulberg Society.</p> <p>Mob under political leadership attacks Naroda Gaon and Patiya from 9.30 a.m. onwards; girls and women sexually assaulted and torched; dozens killed; Naroda under Ahmedabad CP jurisdiction.</p> <p>Two Ministers take control of the Ahmedabad City Police Control room and actually misdirect and influence police interventions so that innocent lives are <i>not</i> saved. Police refuse to register proper FIRs or investigate offences.</p>
March, 02	NHRC's interim report indicting the police in Gujarat including the Ahmedabad police for dereliction of duty.
June, 02	Concerned Citizens Tribunal presided over by two retired judges of the Supreme Court indicts the Gujarat police including the Ahmedabad police. Shri PC Pande is named as one of the policemen directly responsible for complicity and dereliction of duty.

July, 02	Final Report of NHRC indicting the police during this period. Petitions filed by various individuals and organizations in the Supreme Court giving evidence and instances of dereliction of duty by Shri Pandey.
July 2002	Shri PC Pandey files affidavit before Nanavaty Shah Commission and is silent on critical issues relating to his role and responsibility.
September, 03	NHRC files Transfer Petitions in Supreme Court seeking transfer of various trials including in respect of three cases of Ahmedabad outside Gujarat. Notices issued in the Petition and trials stayed.
January, 04	Supreme Court directs investigation in Bilquis Bano's case to be handed over to CBI.
February, 04	Shri Pandey appointed as Joint Director of CBI.
February 18 2004	Petitioners address a letter protesting against Shri Pandey's appointment.
March18,2004	Petitioners file a petition being Writ Petition (C) 147/2004 challenging Shri PC Pande's appointment to the CBI before this Hon'ble Court.
April5,2004	Notice issued in Writ Petition (C) No.147 of 2004.

August 8, 2004 Shri PC Pande deposes before the Nanavaty-Shah Commission and is completely and shockingly silent on direct issues linked to issues on his jurisdiction.

August 17,2004 Order passed by this Hon'ble Court in Writ Petition (Crl) No.109/2003 ordering re-opening of 2000 cases to be supervised by the DGP of the State and fresh reports submitted to this Hon'ble Court.

October 25, 2004 Writ Petition (C) No.147 of 2004 disposed by this Hon'ble Court in view of the Central government's agreement not to involve Shri Pande in any Gujarat related cases he is allowed to be horizontally moved to another position in Central forces.

 P.C. Pandey transferred to the Indo-Tibetan Border Force.

April 26, 2006 Gujarat Government announced its decision to appoint Shri PC Pandey as Director General of Police, Gujarat.

May 1, 2006 Writ Petition filed challenging the said appointment in public interest.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 219 OF 2006

IN THE MATTER OF

Citizens for Justice and Peace
Through its Secretary,
Ms. Teesta Setalvad,
‘NIRHANT’
Juhu Tara Road,
Santa Cruz (West)
Mumbai

...Petitioner

Versus

1. The State of Gujarat
Through its Chief Secretary,
Sachivalaya,
Gandhinagar,
Gujarat

...Respondent No. 1

2. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001

...Respondent No. 2

3. Shri P. C. Pandey,
Having his office at
Police Bhavan,
Gandhi Nagar, Gujarat

...Respondent No. 3

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES
OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioners are filing the above Petition under Article 32 of the Constitution of India being aggrieved by the order appointing

Respondent No.2 as the Director General of Police, State of Gujarat in public interest. The petitioner is filing the present petition as rights guaranteed under article 21 of the Constitution of India are being violated by the aforesaid appointment.

2. Petitioner No.1 is an organization which started as a response to the carnage which took place in Gujarat from 27th February, 2002 onwards. Its main objective is to bridge the gap between the various religious communities as also to ensure that justice is done to those who are the victims of communalism. Towards this end it is involved in various activities including relief and rehabilitation, public advocacy on the issue of communalism. It had set up a Concerned Citizens Tribunal to go into the causes and extent of communal violence in Gujarat headed by 2 retired judges of this Hon'ble Court. The Report of this Tribunal is published in two volumes. The active members of Petitioner No.1 include eminent personalities such as Vijay Tendulkar, Alyque Padamsee, Javed Akhtar, Anil Dharkar, Cyrus Guzder, and others.
3. The Respondent No.1 is the State of Gujarat which is in charge of making appointments to the higher posts within the Gujarat police. The Respondent no.2 is the Union Government under whose jurisdiction the Respondent no.3 serves and who is responsible for monitoring conditions of service for IAS and IPS officers. The Respondent No.3 is the police officer whose appointment as DGP to the State of Gujarat is challenged before this Hon'ble Court in the present petition.
4. The present petition arises out of the recent appointment of Respondent No.3 to the post of Director General of Police of the State of Gujarat. The State government by its notification issued on April 26,

2006 bearing number IPS/102006/1487/B has appointed Shri.P.C.Pandey as the Director General of Police. The Petitioner craves leave to refer to and rely upon the said document at the time of hearing of the Petition.

5. On 27th February, 2002 the Godhra carnage took place wherein about 58 persons travelling by Coach S-6 of the Sabarmati Express were burnt alive. On the same day the Vishva Hindu Parishad gave a call for Gujarat Bandh on 28th February, 2002. From 28th February, 2002 a major carnage took place in Gujarat which led to the death of approximately 2000 persons, an overwhelming majority of whom belonging to the minority community. The worst affected area during this period was Ahmedabad city which witnessed the killings of hundreds of people and displacement of tens of thousands of persons.
6. During this entire period Respondent No.3 was the Commissioner of Police of Ahmedabad city. A number of fact finding Reports and commissions have come to the conclusion that the carnage which took place from 28th February, 2002 in Gujarat generally and in Ahmedabad in particular was avoidable and was at least partly as a result of police negligence, if not conspiracy and connivance.
7. The police of any state is the investigative and law and order body of the state. Law and order is a state subject. As Director General of Police of a state, the man or woman in charge is constitutionally required to be a person of unimpeachable independence and impartiality. People retain faith in any position or institution if the person and post functions with ideological and executive independence and neutrality. This has also been emphasised by this Hon'ble Court in the case of Vineet Narain [(1998)1SCC226] where

directions were given for ensuring its independence. This neutrality is sought to be compromised by appointment of Shri Pandey as DGP, State of Gujarat. Shri Pandey's past history shows that he has acted in an ideologically and administratively partisan manner during the Gujarat carnage which took place in 2002. Besides, presently a number of cases pertaining to Gujarat are pending decision on transfer of investigation to CBI. Over 2,000 cases violence related cases are being presently re-investigated by a special team of the Gujarat police. The record of the past four years shows far from exemplary conduct. Under the direction and sway of a man like the Respondent no.3 and his political mentor, the charge of partisan behaviour will be at its worst. In these circumstances the appointment of Shri Pandey is not only unjustified but also colourable. It will lead to a large number of persons losing faith in the state.

8. The Petitioners submit that the main reasons for opposing Respondent No.3's appointment is that he was complicit in the murder of at least 700 persons in Ahmedabad and acted at the behest of the ruling party which is obvious from the following facts:

- (a) Despite the fact that the Vishva Hindu Parishad called for an all Gujarat Bandh and despite the fact that Ahmedabad is a communally sensitive city only two persons were arrested on a preventive basis in the entire city of Ahmedabad on 27th February, 2002. Both these persons were Muslims.

- (b) On 28th February, 2002 when the entire Ahmedabad city was aflame, Respondent No.3 as the Commissioner of Police allowed the city to burn by his various acts of omission or commission.

- (c) On 28th February, 2002 when large mobs were running amuck in Ahmedabad, Respondent No.3 allowed 2 ministers to be present in the Police Control room thereby allowing direct interference in the police functioning.
- (d) On 28th February, 2002 when ex MP Ahsan Jafri requested protection, the same was promised by the Respondent No.3 and then not given leading to the death of 34 persons including Shri Jafri.
- (e) During the period following 27th February, 2002, Shri Pandey not only allowed killings of innocent persons but also subverted any genuine investigation into these murders. He also failed to take action against the perpetrators and policemen who were obviously guilty of negligence, if not connivance in the carnage.
- (f) Respondent No.3 has failed to implement a large number of provisions of the Indian Penal Code and allied laws, which if implemented, would have led to prevention of the carnage.
- (g) Respondent No.3 is guilty of gross dereliction of duty and has violated various provisions of the service rules which govern him. Thus he needs to be proceeded against departmentally under the service rules and not be granted promotion.

9. The National Human Rights Commission, in both its interim and final report has indicted the Gujarat police which includes the Respondent No.2 for their actions and inactions during the carnage. The relevant portion of its observations and recommendations are as follows:
- “ The Commission [NHRC] would like to recall, in this connection, certain positions that it took in its Proceedings of 1 April 2002, when it held, inter alia, that:

“... it is the primary responsibility of the State to protect the right to life, liberty, equality and dignity of all those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence.”

The Commission then added that:

“... it is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.”

“10. The Commission would, further, like to draw attention to its Proceedings of 31 May 2002, in which it underlined the unambiguous duty of the police and the magistracy to fulfil their statutory responsibilities under the laws of the land and in accordance with the circulars and guidelines already issued by the Central Government on matters relating to the promotion of communal harmony and the maintenance of law and order. As those responsibilities and the relevant statutory provisions, circulars and guidelines are detailed fully in the Commission’s Proceedings of 31 May 2002, they are not being repeated here. Suffice it to say, however, that those laws and directives clearly lay down the manner in which the police and magistracy are expected to function and that any failure to discharge their responsibilities in accordance with those statutory provisions, circulars and guidelines would render the delinquent public servants personally liable and accountable for their conduct.

“11. It is opportune here to recall the rulings of the High Court of Madras in two cases having to do with the duty of a magistrate when public peace is threatened, inter alia, by the

taking out of processions in public streets. In *Sundram Chetti and Others vs The Queen* (1883 ILR 6 Mad. 203 (F.B.)), it was held:

“The first duty of the Government is the preservation of life and property, and, to secure this end, power is conferred on its officer to interfere with even the ordinary rights of members of the community

“ In this view, it matters not whether the exercise of the rights of procession is of ancient usage or a novelty; the Government is not bound to deprive some members of the community of the services of the force that is found necessary for the protection of their lives and property to enable others to exercise a right which not only is not indispensable to life or to the security of property, but, in the case assumed, creates an excitement which endangers both.....

Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace”

“In similar vein, in *Muthialu Chetti vs. Bapun Saib* (1880 ILR 2 Mad. 142) the High Court of Madras held:

“For the preservation of the public peace he (the Magistrate) has a special authority – an authority limited to certain occasionsIf he apprehends that the lawful exercise of a right may lead to civil tumult, and he doubts whether he has available a sufficient force to

suppress such tumult, or to render it innocuous, regard for the public welfare is allowed to override temporarily the private right, and the Magistrate is authorised to interdict its exercise.”

“12. It is worth emphasizing, in this connection, that these two rulings of the High Court of Madras were quoted with approval by the Supreme Court in the Ayodhya Judgement (M. Ismail Faruqui vs. Union of India, AIR 1995 S.C.605) when it was observed that, even prior to the guarantee of freedom of religion in the Constitution of India, it had been held that all religions were to be treated equally, with the State maintaining neutrality between them having regard to the public welfare. It follows, then, that there is even greater need now, in the light of the Constitutional guarantees that exist, for the State and its agents to act in accordance with that principle.”

“13. The Commission has had occasion to stress that it is essential to heal the wounds and to look to a future of peace and harmony in Gujarat. The Commission has, however, added that the pursuit of these high objectives must be based on justice and the upholding of the Constitution and the laws of the land.

“ 14. It therefore remains fundamentally important, in such circumstances, that those who are responsible for the promotion of communal harmony and the maintenance of law and order – whether in the political or administrative leadership – should discharge their duties in the present and future in accordance with that Constitution and the relevant statutory provisions, or be answerable for such acts of omission or commission that result in the violation of the law and the rights to life, liberty, equality and dignity of their fellow human beings.

(Justice J.S. Verma), Chairperson, (Justice K. Ramaswamy)
Member, (Justice Sujata V. Manohar), Member, (Virendra
Dayal), Member”.

10. The Citizen’s Tribunal, presided over by two retired judges of this Hon’ble Court had the following to observe about the role of Gujarat Police and more specifically the role of Respondent No.3:

“7.2 State Police Misbehaviour

7.2.1 Evidence before the Tribunal clearly establishes the absolute failure of large sections of the Gujarat police to fulfil their constitutional duty and prevent mass massacre, rape and arson — in short, to maintain law and order. Worse still is the evidence of their active connivance and brutality, their indulgence in vulgar and obscene conduct against women and children in full public view. It is as if, instead of being impartial keepers of the rule of law, they were a part of the *Hindutva* brigade targeting helpless Muslims.

“Once the Godhra tragedy had occurred, the Gujarat police made no preventive arrests.... (*Ref Annexures Police statistics, Volume I*). The only two arrests made on February 27 were those of Shri Mohammed Ismail Jalaluddin and Shri Fateh Mohammed, who were picked up at Astodia that night, for shouting slogans.

“Significantly, the police waited in the wings as subsequent events unfolded. By the evening of February 27, the VHP had made its intentions apparent with its strident call for a ‘Gujarat *Bandh*’ the next day and a ‘Bharat *Bandh*’ the day after. Seeing the Godhra incident as ‘a manifestation of Islamic fundamentalism’, the VHP gave a 24-hour ultimatum to the state government to bring the culprits to book. (Two years ago, in the Gujarat *Bandh* it enforced on August 1, 2000, the VHP and the BJP had gone on the

rampage, destroying Muslim property worth Rs. 15 crore. (Ref. chapter on *Build-Up in Gujarat, Volume II*). This recent history alone should have been sufficient reason for the police to make preventive arrests and take other precautionary measures.

7.2.3 “Since 1998, there has been a proliferation of hate speech and incendiary pamphlets all over Gujarat. The Gujarat government and the police had enough evidence of this incendiary and provocative literature, printed in hundreds of thousands and thrust even on those opposed to the violent brand of politics that they typify. Various communal Hindu groups -- *Dharam Raksha Samitis* (Committee for Protecting Hinduism), the VHP, the Bajrang Dal -- have been circulating these pamphlets inciting its cadres to rape, humiliate, destroy and kill. As of early February this year, a highly provocative pamphlet exhorting cadres to economically boycott Muslims was in circulation throughout the state. The Gujarat police are guilty of not initiating or pursuing criminal action against the hate-mongers for four long years, even after hate speech and hate writing had frequently been used to create an ‘appropriate’ social climate to precipitate violence against the minorities. To argue that hate speech is not related to engineered violence would be puerile. In August 1998, the VHP’s pamphlet, ‘Onward To Sanjeli’ resulted in anti-Muslim violence in Sanjeli and Randikpur. In December 1999, the *Sangh Parivar*’s reign of terror in the Dangs in south Gujarat was preceded by anti-Christian pamphlets that were distributed in lakhs. (Ref. section *Annexures, Hate Writing, Volume I*).

7.2.4 “There is adequate evidence recorded by the Tribunal from rural and urban Gujarat, which points to systematic data collection by the VHP/RSS/BD outfits, aided by sections of the state administration under the direct control of the fraternal BJP. The exhaustive survey included drawing up of lists using revenue and sales tax records, electoral rolls, information from the registrar of companies and door-to-door information collection drives by *shakhas* (cells) of these outfits, to enable action, both precise and swift, at the right time. Throughout the sinister planning and plotting, the Gujarat police maintained a discreet distance, adopting a non-interfering stance to blatantly unlawful activities. On March 12, *rediff.com* posted an interview by the Gujarat VHP chief, KK Shastri on its website. He revealed in the interview: “In the morning (February 28), we sat down and prepared the list (of Muslim shops and establishments to be targeted). We were not prepared in advance.” The [Ahmedabad] police [under the leadership of Shri PC Pandey and the Gujarat Police under the guidance of then DGP Shri Chakroborty] have not thought it fit to initiate any inquiry or action against Shri Shastri despite his self-confession of the VHP’s criminal misconduct.

7.2.5 “The Tribunal received direct information through a testimony from a highly placed source of a meeting where the chief minister, two or three senior cabinet colleagues, the CP of Ahmedabad, and an IG police of the state were present. This meeting took place on the late evening of February 27. The meeting had a singular purpose: the senior-most police officials were told that they should expect a “Hindu reaction” after Godhra.

They were also told that they should not do anything to contain this reaction.

7.2.6 “The police tried their best, but they could not stop the mobs. They were grossly outnumbered when the mobs grew,” Ahmedabad’s police commissioner, Shri PC Pandey had pleaded. But in most cases, inadequacy of forces is a mere excuse touted by serving police officers who fail in their primary duty. Even in Gujarat this time, in several cases where good officers held out against political pressure, the same small deployment was enough to act decisively and control the situation. In the vast majority of cases, however, the police either did not act or acted on behalf of the mob.

7.2.7 “PC Pandey publicly changed his stand four months later when, on June 1, 2002, in an interview he stated that “VHP and BD were responsible for the violence in the state.” (*rediff.com—see Annexures*).

7.2.8 “The shocking levels of police complicity in the Gujarat carnage cannot be over-emphasised. On February 28, of the 40 persons shot dead by the police in Ahmedabad city, 36 were Muslims. This, despite the fact that it was the minority community which was being targeted by huge and well-armed mobs on that day, at both Naroda Gaon and Patiya as well as Chamanpura..... (*Ref section Annexure, Police Statistics, Volume I*). Among the numerous instances of the police making victims the target, is also one that took place on April 15, when two persons belonging to the minority community, Shri Ayub Khan Pathan being one of

them, were shot dead at Dariapur, Ahmedabad. The police was effectively aiding an attacking mob that was pelting stones on the hapless Muslim residents in the area. Even minors were shot at, a few fatally, by the police. (*Ref. Annexures, Police: Dereliction of Duty, Volume I*).

“Gujarat Police has finally admitted that it killed more Muslims than Hindus in its ostensible attempts to stop what was clearly targeted Hindu violence against Muslims. Of the 184 people who died in police firing since the violence began, 104 are Muslims, says a report drafted by Gujarat police force itself. This statistic substantiates the allegations of riot victims from virtually every part of the state that not only did the local police not do anything to stop the Hindu mobs; they actually turned their guns on the helpless Muslim victims.

7.2.9 “Shri Pandey’s comments, telecast during the ‘Newshour’ bulletin of *Star News* on February 28, on the role of the police under his command was telling: “These people also, they somehow get carried away by the overall general sentiment. That’s the whole trouble. The police are equally influenced by the overall general sentiments.” Here we have a top police official being indulgent towards his policemen who “somehow” get carried away by “general sentiments”, when the least that could be expected of him would be a categorical assertion that those in the force who had failed to enforce ‘the rule of law’ were a disgrace to the uniform they donned and would themselves be punished in accordance with the law.

7.2.10 “Shri Pandey pronounced on ‘Newshour’ (*Star News*) on March 2: “The situation is well within control. In fact, it is fast

returning to normal. So we hope that within the next maybe 12-24 hours, we would have complete peace.” The people of Ahmedabad who lived in terror until late April know otherwise.

7.2.11 “The police did not even conduct the mandatory police drill. They did not even follow basic procedure stipulated for such circumstances. It did not contact religious and community leaders to make appeals for peace, nor did it take steps to arrest the culprits and give support to the victims.

7.2.12 “On February 28, as carefully planned mass killings were engineered in 30 different locations all over the state, two senior cabinet ministers sat in the police control room in Ahmedabad and the state police control room in Gandhinagar and directly influenced police action, or inaction. Gujarat’s health minister, Shri Ashok Bhatt – who, incidentally, faces a criminal charge for the murder of a police head constable, Desai, on April 22, 1985 at Khadia in Ahmedabad – was in the police control room (PCR) at the Ahmedabad police commissionerate in Shahibaug for more than three hours on February 28. And urban development minister, Shri IK Jadeja who is considered Modi’s right hand man, had parked himself in the state police control room at Gandhinagar for four hours from 11 a.m. onwards on the same day. Commissioner Pandey’s untenable explanation is that they were only there to facilitate the easy flow of government directions, as union defence minister George Fernandes was to arrive in the city on March 1. In a crisis situation, the control room is a critical area of operation since this is one place where every bit of information is sent to and received from various locations in the city, or the entire state. The officer-in-charge of the control

room is always kept informed on wireless about what is happening. To have cabinet ministers sitting inside the state and city police control rooms can mean only one thing: they were there to influence the independent functioning of the police. The actions and non-actions of the Gujarat police on that day and thereafter, are, barring a few sterling exceptions, proof of the partisan, political control over the police.

7.2.13 “The police chiefs of Ahmedabad, Vadodara, Rajkot, Mehsana, Panchmahal, Dahod and Sabarkantha stand individually indicted for their failure to control unprecedented violence under their respective jurisdictions. The SPs of several of Gujarat’s 24 districts are also directly culpable. (*Ref. chapter List of Accused: Policemen, Volume II*). The general message sent out to the police was: minimum response to panic calls and minimal action thereafter; indulgence towards armed mobs as they went about their business of killing, rape, loot and arson; either non-registration or tailoring of complaints from victims. It is unpardonable that the police obeyed such unwritten directions from Shri Modi and other political bosses.

7.2.14 “The Tribunal has enough evidence to establish that the Gujarat carnage was not simply a case of failure or abdication of duty; in far too many cases, the police were accomplices in the carnage. (*Ref. section on Incidents of Violence, Volume I*). We recall here just a few of the most glaring instances of obvious police complicity:

- ◆ On February 28, former Congress MP, Shri Ahsan Jafri from the Gulberg Society in Chamanpura, made repeated frantic calls pleading for police assistance against a huge mob in a

murderous mood. He kept calling the control room for several hours, until, finally, with no one to check the mob, he was charred to death along with 65 of his relatives and neighbours. Pleading anonymity, police officials who met the Tribunal confirmed that Shri Jafri had also made frantic calls to the director general of police, the police commissioner, the chief secretary and the additional chief secretary (home) among others. Three mobile vans of the city police were on hand around Shri Jafri's house but did not intervene. Finally, when he came out of his house with folded hands and appealed to the crowd to spare all the others who had taken shelter in his house, the marauders cut him to pieces and then consigned him to flames. They also set fire to the house in an attempt to burn alive all those who were in the house. It was only *nine hours* later that the Rapid Action Force (RAF) of the central government intervened, by which time it was far too late.

“At around the same time as the carnage in Chamanpura was taking place, the massacre in Naroda Patiya began, in which, by the end of the day, over 91 Muslims [at least] had been torched. Over two dozen survivors from Naroda Gaon and Naroda Patiya who appeared before the Tribunal said that they had attempted over a hundred distress calls to the police commissioner and other police officers for help, all in vain. They said that the commissioner's mobile was permanently switched off. The response from most of the other top officers -- additional CPs and DCPs -- was equally callous. Police finally arrived only around 11 p.m.

“Shri KK Mysorewala, police inspector, Naroda police station, was indicted by several eyewitnesses for being a mere bystander, watching the massacre of helpless men, women and children at Naroda Gaon and Patiya.

“The police could not, or did not, respond to pleas for protection to a retired and a sitting judge of the Ahmedabad high court (Justice Akbar Divecha and Justice MH Kadri respectively), compelling them to seek army help on the night of February 28-March 1. None less than the sitting chief justice of the Gujarat High Court told his brother judges not to rely on the police.

“The police did nothing while a very large number of shops, hotels and business premises were looted and burnt. Almost nine months after the carnage, they have made no attempt to recover the goods looted even by people from educated, rich and middle-class backgrounds. In all probability, the looted goods could be recovered from the homes of the culprits even today.

7.2.15 “One of the most shocking aspects of the Gujarat carnage was that the constituencies of some ministers and sitting MLAs were the arena for the worst incidents of carnage. Bapunagar in Ahmedabad, one of the worst affected areas, is the home constituency of the minister of state for home, Shri Gordhan Zadaphiya. Paldi, Ahmedabad is the constituency of Shri Haren Pandya, former state home minister and, until recently, revenue minister in Shri Modi’s cabinet. Shri Nitin Patel, also a state cabinet minister, is charged with leading the violence (including sexual assault of a woman) in Kadih, Mehsana district. Shri Naran Patel is a sitting MLA and transport minister in Shri Modi’s cabinet, from Unjha in Mehsana district who allegedly inspired

and abetted mob violence, including sexual assault and arson. Rajkot, from where Shri Modi recently won an election, had never witnessed a riot before. Shri Prabhatsingh Chauhan, transport minister from Panchmahal has been directly indicted by witnesses. Shri Ashok Bhatt, state health minister, is named in the evidence of victims. In all these areas, the police took no preventive steps; worse, in areas like Paldi, Gomtipur and many district places, many eyewitnesses have charged them with helping and even leading mobs.

7.2.16 “To begin with, police failure to quash rumours, deliberately floated to inflame passion and fuel violence, is unpardonable. In addition, from February 27 to April 10, it failed miserably in taking decisive action to control the violence that followed. The daily newspaper *Sandesh* was used to actively promote fear and insecurity in the minds of the majority while the minority was being targeted. However, the police did precious little to diffuse the situation.

7.2.16 “As if this were not bad enough, the police itself committed atrocities against Muslims, especially in Vadodara (Bahar Colony, Noor Park and other areas) and Ahmedabad (Gomtipur and elsewhere). Even women were beaten and thrashed, often on their breasts and vaginas. In fact, such widespread sexual misbehaviour of the police with Muslim women marks a new low in police misconduct against the minorities.

7.2.16 “It is a matter of public knowledge that in the past 3-4 years the VHP and the Bajrang Dal have distributed *trishuls* on a large scale in Gujarat. Barely disguised as a ‘religious symbol’, *trishuls*

are sharp, three-pronged weapons that can easily cause fatal injury. These organisations have had no qualms in publicising their arms training camps, even for young children and women. Witnesses from the area who deposed before the Tribunal said that Kathwada, near Memdavad in Kheda district, is one of the locations that the *Sangh Parivar* combine allegedly used for training in the use of weapons and techniques of killing. The Gujarat police cannot pretend to be unaware of the regular camps that have been conducted in recent years, arming and training bands of youth. Besides, as is evident from the track record of these outfits that in Gujarat, and elsewhere in the country, the VHP/BD have frequently disturbed peace and harmony. Yet the Gujarat police took no steps to seize the weapons, stop the training camps or act against its practitioners in any other way. Significantly, even after the carnage, the distribution of *trishuls*, swords and other arms continued in Gujarat until late March. It was only in mid-April, after the orgy of violence had claimed a very large number of victims and more or less run its course, did the police finally seize arms in Bejalpur, Shahpur, Maninagar, Vatwa and Kalupur in Ahmedabad. However, there has been no prosecution, no arrest of persons indulging in such acts, no seizure of the *trishuls* and swords distributed on such a large scale. Carrying weapons that can be used to kill is an offence and the police should have taken action against the offenders right at the outset.

7.2.17 “ Police conduct after the Gujarat carnage, with regard to the registration of crimes, conducting of investigations etc., has been marked by a desire to please political bosses and an utter disregard for the law of the land. This is nothing but calculated

miscarriage of justice. The police are required to file separate FIRs for each incident. Instead, separate incidents of crime committed by different aggressors at different places at different times have been clubbed together in single omnibus FIRs. *Panchnamas* have either been made 3-4 weeks after the incidents or not at all. Also, if the charge-sheets filed in the Gulberg (Chamanpura), Naroda Gaon and Patiya massacres are anything to go by, the names of the main accused have been conveniently dropped. Worse still, in places like Pandharwada, Anjanwa, Mora (Panchmahal district), Randhikpur and Sanjeli, Fatehpur and Dailol (Dahod district) as well as in villages in Bharuch, Sabarkantha, Mehsana and Himmatnagar districts, the Tribunal has evidence of the police bullying victim-survivors into filing FIRs wherein only mobs are mentioned, without naming the assailants and mob leaders whom the victim-survivors had clearly recognised during the incidents of violence. The CPs of Ahmedabad and Vadodara are also culpable for similar police misconduct.

7.2.18 “In far too many incidents of violence, the police refused to intervene, sided with the perpetrators of crimes, itself indulged in criminal acts, and denied curfew passes to social workers and human rights activists who, at great risk to life and limb, moved around nonetheless at the height of the violence, in a bid to restore peace.

7.2.19 “The police completely failed in providing protection to relief camps sheltering traumatised and desperate survivors, for as long as six months in many cases.

7.2.20 “Police conduct in compiling data and statistics about the loss of life, destruction of property, missing persons, too, has been totally callous to say the least.

7.2.21 “*Continuing violence:* In Ahmedabad city, Vadodara, Himmatnagar, and Mehsana district, where violence continued unabated, as also in places like Panchmahal district, Rajkot and Bhavnagar where sporadic incidents occurred, the police inspired no confidence amongst the affected, even after the first round of brutalities. It is responsible for highly dubious conduct from mid-March to mid-May. On the eve of PM Atal Behari Vajpayee’s visit to Ahmedabad on April 4, the police led an assault against Muslims in the curfew-ridden parts of Gomtipur. In the presence of Shri Parmar, an official from the Ahmedabad collectorate, the police led by PI, SD Sharma, set upon the 750 refugees of the Suleiman Roza Relief Camp (behind Nutan Mills), Saraspur, and actually shot two persons, Shri Pirujbhai Mohammad Sheikh (30) and Smt. Khatoonbi Sharfuddin Saiyed (45). As a result, the 750-strong camp was wound up under threat of violence. On April 3, Advocate Shri Nizam was shot dead by the police inside his home while Dr. Ishaq Sheikh, vice-president of the Al Ameen Garib Niwas Hospital, was brutally assaulted. (*Ref See section Incidents of Violence: Continuing Violence, Volume I*). On April 14, the police shot dead two more persons at Dariapur, even as they were being attacked by a violent mob. The Tribunal is certain that the number of lives lost due to deliberate police criminality is astronomically high. (These figures are being withheld by the state government.) All its acts of commission and omission are sufficient to indict the Gujarat police before any forum for justice.

7.2.22 “As late as November 12, as CEC, JM Lyngdoh, was visiting the state to oversee operations for safe elections, rampaging mobs terrorised Muslim families who had returned from Dasaj town to their nearby villages Mehrwada, Jaska and Kohda (Mehsana district). Minister Narayan Laloo Patel was actively involved in instigating the violence.

7.3.12 “One of the gravest charges made by the victim-survivors and also senior police officers too who deposed before the Tribunal, is of the great danger to the neutrality of the Gujarat police force by overt and covert measures to infiltrate it with persons owing allegiance to the thinking and mind-set of the RSS/VHP/BD and BJP. The dangers of such developments cannot be over-stated. Instead of a man or a woman wedded to constitutionalism and attendant values, the result of such placements could be a police official who does not care to protect lives without fear or favour, regardless of caste, creed and community. He or she is more concerned with furthering a particular thinking that has on many an occasion in the present been the cause of the perpetration of violence.

“The Tribunal is of the view that a significant section of the Gujarat police is guilty of gross dereliction of duty and of flouting the Indian Constitution and Indian criminal law. Therefore, all the individual policemen named by the Tribunal in the list of accused must be promptly prosecuted. The shameful and brazenly partisan conduct of the police in the Gujarat carnage is a blot on Indian democracy and Indian secularism. Our democratic and secular credentials are

truly tested only in times of such acute crisis. In such situations, the police have been utterly partisan and communal, repeatedly failing to protect and even themselves trampling on the fundamental rights of India's religious minorities. This highly disturbing trend needs to be dealt with urgently and comprehensively."

11. The petitioners crave leave to attach affidavits of eyewitness survivors from the Gulberg Society massacre who not simply witnessed the carnage but also witnessed Shri PC Pandey's visit to the Gulberg Society around 10.30 a.m. on February 28, 2002 and who saw the attacks on their society by politically driven mobs *increase* after he left.
12. It is submitted that the Respondent No.2 had sufficient legal as well as administrative means at his disposal to tackle the situation effectively, if not to prevent it altogether. Section 151 of the Criminal Procedure Code (CrPC) permits preventive arrests by the police. It reads: "151(1). A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the offence cannot be otherwise prevented." Similarly Section 3 of the National Security Act, 1980 allows preventive arrests by the Central or the State government of any person likely to act in a manner prejudicial to the maintenance of public order. The Gujarat police, by abdicating its responsibility in the matter of preventive arrest, revealed not simply its unprofessional character and conduct. In the longer term, the failure of the law and order machinery to act and to act fairly and swiftly, often against

politicians and their cadres, is reflective of the symptomatic erosion that has taken place in the criminal justice system in India. Today it would be no exaggeration to say in the context of Gujarat that the criminal justice system in India has collapsed.

13. The petitioners say and submit that Shri Pandey also appeared before the Nanavaty-Shah Commission of Inquiry inquiring into the carnage and in a shocking blot to his position, testified stating that he had 'loss of memory" about what had transpired. The Petitioner craves leave to refer to and rely upon the press clippings reporting about the said fact. On July 5, 2002, this official had filed an affidavit before the same commission that is a long litany on the history of communal violence; deals at length on the Godhra mass arson but has only this to state on the Gulberg Society and Naroda Gam and Patiya Massacre for which he is directly culpable and responsible.
14. The petitioners say and submit that in the aforesaid affidavit there is no desire even to mention or clarify the direct (nearly unchallenged assertion) that Ministers sat in the City and State Police Control rooms at Shahi Baug, Ahmedabad and Gandhinagar and controlled/influenced police actions (inaction). There is also no mention of his visit to Gulberg society and his utter failure to send in reinforcements to Naroda Gaon and Patiya on the outskirts of Ahmedabad where a massacre involving top brass took place.
15. The Petitioners submit that a number of Petitions are pending before this Hon'ble Court wherein the relief sought for is to transfer the investigation of some of the cases inter alia of Ahmedabad to

the CBI as also transfer the trial of these cases outside Gujarat. Similarly, in the case of Bilquis the Supreme Court has already transferred the investigation to the CBI. The petitioners say and submit that the entire legal justice and struggle of victim survivors and human rights defenders in the Gujarat related cases and until today shows not simply the deep complicity between the highest echelons of the state police, administration and influential; political executive in promoting violence and protecting the guilty, but four years down, reveals an utter and complete lack of remorse and cynical disregard of the rule of law and criminal justice system. It would be a serious long term danger if such blatantly defiant acts, that challenge, at the root, the secular democratic principles of the Constitution and the secular democratic fabric of the Indian republic, are allowed to go, unchecked. In these circumstances, to allow one of the major culprits to hold a high position in the very organisation is a colourable exercise of power and amounts to compromising the independence and autonomy of the law and order machinery.

16. Police inaction is punishable for Omnibus FIRS, non identification of Accused, Obfuscation of identity of Accused. It must be noted here that inaction during such a situation is punishable under Section 166 of the Indian Penal Code (IPC). Section 154 of the Code of Criminal Procedure deals with the First Information Report of cognisable offences and is the first crucial step in prosecution of offenders.
17. The overtly partisan behaviour of the Gujarat police can be assessed from the language contained in the chargesheets related

to the major incidents of mass massacres. For instance, the chargesheet filed in the Gulberg Society killings, where no less than 60-70 persons were brutally killed, virtually begins with a defence of the accused and paints the victims as instigators.

“It was after the firing by Jafri on members of the mob (of 23,000) that the mob got violent and attacked the locality”. This recording of the offence is shocking and completely contradictory of the facts. The Gulberg Society was under a violent siege since 7.30 a.m. on February 28, 2002; the Commissioner of Police, Respondent no.3 visited Jafri at 10.30 a.m. and ensured protection; the crowds grew ominously by 11.30 a.m.; and finally Jafri gave himself up to the aggressors in order to save innocent men, women and children who had sought shelter in his home, at 2.30 p.m.

18. That as per the charge sheet filed in the case relating to Naroda Patiya, also under the jurisdiction of Respondent no.3 at that time, “The unruly crowd of Naroda Patiya went on the rampage after a mini-truck driven by a Muslim ran over a Hindu youth and the mutilated body of a Hindu was recovered from the area... the crowd was anguished by the incident”.
19. That the Respondent no.1 unilaterally had closed nearly 2000 cases relating to the riots filing A summary reports. This fact was brought to the notice of this Hon’ble Court by way of an application being CrI.M.P.No.3741/2004 in Writ Petition(crl) No.109 of 2003. This Hon’ble Court was pleased to pass an order on August 17, 2004 where detailed directions were given with respect to fresh scrutiny of these cases and submissions of the reports. It is apparent from these directions, that the DGP who is serving at any

point in time would be have authority in this scrutiny and would be overall in charge to report to this Hon'ble Court on the status. Annexed hereto and marked **Annexure-P-1** is a true copy of the order dated August 17, 2004 passed in Writ Petition (crl) No.109 of 2003. It is submitted given the allegations against the Respondent no.3 and his role as City police Commissioner during the riots, it is obvious that authentic reports would not be furnished to this Hon'ble Court and the spirit of the order of this Hon'ble Court which had continued to repose faith in the State police will completely fail.

20. The petitioners say and submit that since the ghastly events of 2002, Shri Pandey was sought to be appointed to the CBI (an announcement that was made by the erstwhile Central Government on February 18, 2004). This was challenged by the Petitioner herein by way of a Writ Petition being Writ Petition (c) No.147 of 2004. The Petition was disposed following an undertaking given by the Respondent no.2 that the Respondent no.3 would not handle any Gujarat-related cases. Annexed hereto and marked **Annexure- P-2** is a is a true copy of the said order dated October 25, 2004 passed by this Hon'ble Court in Writ Petition (C) No. 147 /2004.

21. The Petitioners say and submit that the recent report of the NHRC, a statutory body clearly shows that not much has changed in the hearts and minds of the Gujarat administration and executive. Further, the Petitioners say and submit that the recent developments in even the Pandharwada mass graves case shows,

an all out malicious and vindictive desire of the Gujarat top police brass, under guidance of the political executive to hit out at victim survivors and human rights defenders. If the latest move of respondents 1 and 2 in appointing respondent no. 3 is not checked, not only could things go from bad to worse but what faith that the ordinary person has in correctional justice and remorse will be snatched away. This would indeed be a dangerous precedent.

22. The state complicity into the mass crimes in Gujarat, in 2002 and until now, four years after the massacre has got to do with not simply turning a blind eye or assisting the slaughter of innocents for weeks in 2002, but with thwarting and subverting the natural and Constitutional Process of restitution, redressal of wrongs, due process of law and administration of justice. An example of the State's desire to shield the guilty and prevent redressal of wrongs was manifest in its unseemly haste to close down over 2,000 cases related to the mass carnage. This Hon'ble Court was alerted to this and an order was passed in August 2002, directing that over 2,000 riot related cases be re-opened. The petitioners say and submit that Respondent No 3, Shri PC Pandey , as the Director General of Police, with his questionable past conduct related to the very same 2002 carnage, would, if this Hon'ble Court does not intervene become *the man in charge* of all these reopened cases. This would in the victim survivors eye amount not just to a subversion of the administration of justice but this Hon'ble Court's order.

23. Another manifest policy let loose by the state executive in the state of Gujarat has been to reward the wrong doers among policemen and bureaucrats and policemen and punish those policemen and

administrators who tried, under adverse and trying circumstances to uphold their oath to the Indian republic and Constitution.

24. The Petitioners therefore submit that the image of the law and order machinery and its dignity will be seriously tarnished if Respondent No 3 is appointed to that body. The Petitioners further submit that the person who failed to perform his duties as the head of the city and instead of taking action against him, he is being elevated to the topmost position in the state. His appointment is arbitrary, and will cause violation of the fundamental rights of citizens guaranteed under Article 21 and 14 of the Constitution of India.

25. GROUNDS

- A. It is submitted that as more than 2000 cases relating to the riots were hastily closed by the Gujarat Government, this Hon'ble Court had ordered re-opening of the same and suggested fresh scrutiny under the supervision of the Director General of Police who would then report to this Hon'ble Court. If the present appointment of Shri.Pandey is upheld, he would be advising the Advocate General about the cases in which he was directly involved thus defeating the entire purpose of appointment of that committee.
- B. Because the recent report of the NHRC, a statutory body clearly shows that not much has changed in the hearts and minds of the Gujarat administration and executive. Further, the Petitioners say and submit that the recent developments in even the Pandharwada mass graves case shows, an all out malicious and vindictive desire of the Gujarat top police brass, under guidance of the political executive to hit out at victim

survivors and human rights defenders. If the latest move of respondents 1 and 2 in appointing respondent no. 3 is not checked, not only could things go from bad to worse but what faith that the ordinary person has in correctional justice and remorse will be snatched away. This would indeed be a dangerous precedent.

C. Because police as a State machinery has a very important role to play in the maintenance of law and order. Sections 107-110 and sections 143-152 of the Criminal Procedure Code (CrPC) give adequate preventive and punitive powers and deem it the duty of district magistrates and police chiefs to prevent breach of peace and ensure the rule of law:

- i) Demand execution of bonds, with or without security, from persons likely to commit breach of peace (Sec 107);
- ii) Demand security for good behaviour from any person who intentionally disseminates or attempts to disseminate or abets the dissemination of any material that is likely to incite communal passion or religious hatred (Sec 108);
- iii) Demand security for good behaviour from suspected persons (Sec 109);
- iv) Demand security for good behaviour from habitual offenders (Sec 110);
- v) Prohibit repetition or continuance of public nuisance (Sec 143);
- vi) Issue order in urgent cause of nuisance or apprehended danger (Sec 144);
- vii) Arrest without warrant (Sec 145-148);
- viii) Prevent cognisable offences (Sec 149);

- ix) Information (to immediate seniors) of design to commit cognisable offences (Sec 150);
- x) Arrest to prevent the commission of cognisable offences (Sec 151);
- xi) Prevention of injury to public property (Sec 152)

If the above-mentioned provisions of the CrPC spell out the powers and duties of district magistrates and police chiefs to ensure the rule of law, the All India Service Rules (1969) carry the provisions for the punishment of errant IAS and IPS officials.

D. Because promoting of enmity between different groups on grounds of religion is a recognised criminal offence under Indian law. Indian Statutory Law also gives effective protection to the rights of minorities whether in Gujarat or the rest of the country. The Indian Penal Code (IPC) prescribes criminal prosecution for "wantonly giving provocation with intent to cause riot" (section 153); "promoting enmity between different groups on grounds of religion" (section 153A); "imputations, assertions prejudicial to national integration" (section 153B); "uttering words with deliberate intent to wound the religious feelings of any person" (section 298); "statements conducive to public mischief" (section 505 (1), b and c); and "statements creating or promoting enmity, hatred or ill-will between classes (section 505(2).). The conduct of the respondent no. 3 has been contrary to the prevailing rules and the law.

E. Because the "Guidelines to promote communal harmony" issued by the Indian Ministry of Home Affairs in October 1997 point at the precise

responsibility of the state machinery to deal with potentially inflammatory statements in the context of communal tension. Guideline 15 states that "effective will needs to be displayed by the district authorities in the management of such situations so that ugly incidents do not occur. Provisions in section 153A, 153B, 295 to 298 and 505 of IPC and any other Law should be freely used to deal with individuals promoting communal enmity".

- F. Besides, Article 20 of the International Covenant on Civil and Political Rights, which India ratified in 1979, affirms that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Despite the existence of these provisions have been observed in their breach and both the executive, law and order machinery and the judiciary have shown a marked reluctance to haul up the offenders.

Thus, Respondent No.3 was guilty of gross dereliction of duty but no action whatsoever has been taken against him, despite the State having sufficient legal backing for doing so.

- G. Because in the 'All India Services (Discipline and Appeal) Rules, 1969, Part III – Penalties and Disciplinary Authorities' there *already exist* provisions for the sacking from service of IAS and IPS officials guilty of "any act or omission which renders him liable to any penalty specified in rule 6."

'All India Services (Discipline and Appeal) Rules, 1969, Part III – Penalties and Disciplinary Authorities', there *already exist* provisions for

the sacking from service of IAS and IPS officials guilty of “any act or omission which renders him liable to any penalty specified in rule 6.”

6. Penalties:

(1) The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a member of the Service, namely:

(vii) *Compulsory retirement*: Provided that, if the circumstances of the case so warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the Service under the All India Services (Death-cum-Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may not be less than two-thirds of the appropriate scales indicated in Schedules ‘A’ and ‘B’ of the said rules;

(viii) *Removal from Service* which shall not be a disqualification for future employment under the Government;

(ix) *Dismissal from Service* which shall ordinarily be a disqualification for future employment under the Government.

7. Authority to institute proceedings and to impose penalty:

(Rules under 7(1) (a) and 7(1) (b) specify that, depending on where the person in Service is posted, the competent authority to institute disciplinary proceedings against him or her, to impose on him such penalty specified in rule 6 as it thinks fit, will be the state or the central government – editors.)

7(2) The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government.

7(3) Where the punishing Government is not the Government on whose cadre the member is borne, the latter Government shall be consulted before any penalty specified in rule 6 is imposed:

Provided that in relation to the members of the Service borne on a Joint cadre, the punishing Government shall consult the Joint cadre Authority:

Provided further that where the Governments concerned are the Central Government and the State Government or two State Governments and there is a difference of opinion between the said Government in respect of any matter referred to in this rule, the matter shall be referred to the Central Government for its decisions, which shall be passed in consultation with the Commission.

H. Because The state complicity into the mass crimes in Gujarat, in 2002 and until now, four years after the massacre has got to do with not simply turning a blind eye or assisting the slaughter of innocents for weeks in 2002, but with thwarting and subverting the natural and Constitutional Process of restitution, redressal of wrongs, due process of law and administration of justice. An example of the State's desire to shield the guilty and prevent redressal of wrongs was manifest in its unseemly haste to close down over 2,000 cases related to the mass carnage. This Hon'ble Court was alerted to this and an order was passed in August 2002, directing that over 2,000 riot related cases be re-opened. The petitioners say and submit that Respondent No 3, Shri PC Pandey , as the Director General of Police, with his questionable past conduct related to the very same 2002 carnage, would, if this Hon'ble Court does not intervene become *the man in charge* of all these reopened cases. This would in the victim survivors eye amount not just to a subversion of the administration of justice but this Hon'ble Court's order.

I. Because this Hon'ble Court in Veenit Narain's Case [(1998)1SCC226] has held that It is trite that the holders of public offices are entrusted with certain power to be exercised in public interest alone and, therefore, the

office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet.

J. In respect of the Gujarat carnage the National Human Rights Commission came to the conclusion, both through its interim as well as final report that the police were subverting the investigations and strongly recommended that investigations be taken out of the hands of the State police and be handed over to the C.B.I. Three of the seven investigations in respect of which NHRC gave this recommendation were in respect of brutal incidents which had taken place in Ahmedabad of which Shri Pandey was the Commissioner. This Hon'ble Court is presently seized of a number of matters in which C.B.I. investigation has been demanded including in respect of cases which took place in Ahmedabad during the tenure of Shri Pandey. In these cases it has been submitted by various Petitioners including some extremely prominent persons and organizations that Shri Pandey had actively connived with certain political forces to allow the carnage in Gujarat. It is noteworthy that four years after the ghastly carnage, no repentance or remorse has been shown by the administration or the state executive.

26. That the Petitioners have not filed any other petition challenging the appointment of Respondent no.3 before this Hon'ble Court or any other High Court.

27. That the Petitioners have no other equally efficacious alternative remedy than to approach this Hon'ble Court under Article 32 of the Constitution of India.

PRAYER:

In the facts and circumstances stated hereinabove, it is Most Respectfully prayed that this Hon'ble Court be pleased to:

- i) Issue a Writ of Certiorari quashing the appointment of Respondent No.3 to the post of Director General, State of Gujarat;
- ii) Issue a Writ of Mandamus directing the Respondents no. 1 to take disciplinary action including prosecuting of the Respondent No.3 for having failed in his duties during the Gujarat carnage of 2002;
- iii) pass any other order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY

Filed By:

Advocate for the Petitioner

Drawn on: 27.4.2006
Filed on: 1.5.2006
New Delhi

Status of : Writ Petition (Civil) 147 OF 2004

CITIZENS FOR JUSTICE & PEACE .Vs. UNION OF INDIA & ORS.

Pet. Adv. : MS. APARNA BHAT Res. Adv. : MR. P. PARMESWARAN

Subject Category : LETTER PETITION & PIL MATTER - OTHERS

Listed 2 times earlier Last Listed on : 06/09/2004

W.P(C)No. 147 OF 2004

ITEM NO.11

COURT NO.4

SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (Civil) NO. 147 OF 2004

CITIZENS FOR JUSTICE & PEACE

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for directions and permission to place addl. documents on record)

Date: 25/10/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s)

Ms. Aparna Bhat, Adv.

Mr. P. Ramesh Kumar, Adv.

For Respondent(s)

Mr. G.E. Vahanvati, SG

Mr. A. Subba Rao, Adv.

Mr. P. Parmeswaran, Adv.

Mr. Maninder Singh ,Adv

Mrs. Prathiba M. Singh, Adv.

Mr. Angad Mirdha, Adv.

Mr. Saurabh Mishra, Adv.

Mr. Kirtiman

Singh, Adv.

Mr. Mukul Rohtagi, Sr. Adv.

Ms. Hemantika Wahi ,Adv

Mrs. Archana P. Khopde, Adv.

UPON hearing counsel the Court made the following
O R D E R

The writ petition is disposed of in terms of the signed order.

[STISH K. YADAV]
SAXENA]

COURT MASTER

(Signed order is placed on the file)

[MADHU

COURT MASTER

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.147 OF 2004

CITIZENS FOR JUSTICE & PEACE
.....PETITIONER (S)

Versus

UNION OF INDIA & ORS.
.....RESPONDENT (S)

O R D E R

The learned Solicitor General states that it has been decided to laterally transfer Mr. P.C. Pandey from the post of Additional Director, CBI, to another assignment in the Ministry of Home Affairs which will not, in any way, be involved in the ongoing investigation in relation to the Gujarat matters. The petitioner has not pressed for the second prayer in view of the statement made by the learned Solicitor General. The Writ Petition is accordingly disposed of.

.....J.
[RUMA PAL]

.....J.
[C.K. THAKKER]

New Delhi,
October 25, 2004

<http://www.courtncic.nic.in/temp/wr10903p.txt>

Status of : Writ Petition(Criminal) 109 OF 2003

NATIONAL HUMAN RIGHTS COMMISSION .Vs. STATE OF GUJARAT & ORS.

Pet. Adv. : MR. S. MURALIDHAR

Subject Category : THREE JUDGES BENCH MATTER

Listed 5 times earlier

Next Date of listing is :

19/12/2003

W.P(Crl.)No. 109 OF 2003

ITEM No.301,302 & 303

Court No. 1

SECTION PIL,IX

XVIA,IIA & X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Crl.) No. 109/2003

NATIONAL HUMAN RIGHTS COMMISSION

Petitioner (s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent (s)

(With Appln(s). for intervention & exemption from filing O.T.& Office Report)
With

W.P(Crl.)No.11-15/2003,T.P.(Crl.) No.194-202/2003,SLP(Crl.)No.3770/2003,
SLP(C)No.7951/2002,W.P(Crl.)No.D...17953/2003

(With applns.for stay,exemption & impleading party, permission to submit
addl.documents, directions, exemption from filing CC & office report).

&

SLP(Cr) 4409/2003 (With office report)

WP(Cr) D.....No.21993/2003

&

SLP(Crl).....CrMP.10319/2003 (With applns.for permission to file SLP
& office report)

Date : 21/11/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE DR. JUSTICE AR. LAKSHMANAN

AMICUS CURIAE

Mr.Harish N.Salve,Sr.Adv.

M/s Bhargava V.Desai,Pradeep K.Malik,

Sidharth Choudhary, Sanjeev K. Singh, Advs.

For Petitioner (s) Mr. TR Andhyarujina, Sr. Adv.

M/s. S. Muralidhar, Somiran Sharma,
Rajat Khosla, Amit Sharma, Advs.

Mr. Shanti Bhushan, Sr. Adv.
M/s Mihir Desai, Aparna Bhat, P. Ramesh

M/s JS Wad & Co., Advs.

WP..D.17953/03

In person

M/s. Huzefa Ahmadi, Ejaz Maqbool,
Nakul Dewan, Minakshi Nag, Advs.

For Respondent (s)

Mr. KN Raval, Solicitor General
Mr. Raju Ramachandran, ASG
M/s A. Mariarputham, Prateek Jalan,
Sushma Suri, Aruna Mathur, Advs.

Mr. Mukul Rohtagi, ASG
Mr. PS Mishra, Sr. Adv.
M/s Hemantika Wahi, Tathagat H. Vardhan,
Swarupa Reddy, Vishnu Sharma, Amitesh C. Mishra,
Dhruv Kumar Jha, Advs.

Mr. KTS Tulsi, Sr. Adv.
M/s Lalit Chauhan, Sameer Parekh, Advs. for
M/s PH Parekh & Co.

Mr. Ravindra K. Adsure, Adv.
Mr. VN Raghupathy, Adv.

Mr. PS Mishra, Sr. Adv.
M/s CD Singh, Tathagat H. Vardhan,
D. Kumar Jha, Swarupa Reddy, Advs.

Dr. Nafis A. Siddiqui, Adv.

M/s Mihir Desai, Aparna Bhat,
P. Ramesh Kumar, Advs.

UPON hearing counsel the Court made the following
O R D E R

TP(Crl) 194-202/203.

Issue notice.

Notice has been accepted by Ms. H. Wahi, learned counsel appearing for respondent no. 1 State of Gujarat. She prays for and is allowed two weeks' time to file counter affidavit.

Notice to the remaining respondents shall be served through the State of Gujarat within a period of two weeks.

Until further orders, the trial in the following cases shall remain stayed:-

1. ARISING OUT OF FIR NO. 09/2002 DATED 27.2.2002 OF POLICE

STATION GODHRA:

(i) Criminal Case Nos.1-6/2003 titled State v. Mohmad Rafudan Ansari & Ors. pending in the Court of Special Judge, POTA, Ahmedabad;

(ii) Crime No.09/2002 titled State v. Junia Farooq Hassan & Ors. pending in the Juvenile Court, Godhra;

2. Criminal Case No.275/2002 arising out of FIR No.46/2002 dated 28.2.2002 of Police Station Bijaypur, titled State v. Patel Rameshbhai Kanjibhai & Ors. pending in the Court of Sessions Judge, Mehsana, Gujarat;

3. ARISING OUT OF FIR NO.67/2002 DATED 28.2.2002 OF POLICE STATION MEGHANINAGAR:

(i) Sessions Case No.152/2002 titled State v. Kailash Lalchand Bhai Dhobi & Ors. pending in the Court of Sessions Judge, Bhadra, Ahmedabad;

(ii) Criminal Case No.1720/2002 titled State v. Shankarji Hakaji Mali & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad;

(iii) Criminal Case No.296/2003 titled State v. Sandeep alia Sonu Ghunghru Val Valo & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad;

(iv) Criminal Case No.524/2002 titled State v. Vishal Badrilal Nayee & Ors. pending in the Juvenile Court No.IV, Ahmedabad;

4. ARISING OUT OF FIR NO.100/2002 DATED 28.2.2002 OF POLICE STATION NARODA, AHMEDABAD:

(i) Criminal Case No.982/2002 titled State v. Naresh Amarsingh Chhara & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad, and

(ii) Criminal Case No.1662/2002 titled State v. Padmendra Singh & Ors. pending in the Metropolitan Magistrate Court No.XI, Ahmedabad.

Learned counsel for the petitioner in TP(CrI) Nos.194-202/2003 prays for and is permitted to amend the petitions for including the Sessions trial arising out of CR No.23/2002 and CR No.27/2002 (ODE Massacre). However, further trial in those cases shall remain stayed.

List on 19th December, 2003.

SLP(Cr) 4409/2003.

Issue notice.

Ms.H. Wahi, learned counsel accepts notice. She prays for and is allowed two weeks' time to file reply.

In the meantime, further trial in Sessions Case No.180/2002 shall remain stayed.

List along with WP(CrI) No.109/2003 etc.

WP(CrI)...D.No.21993/2003.

Issue notice.

Ms.H.Wahi, learned counsel for the State of Gujarat, accepts notice. She prays for and is allowed two weeks' time to file reply. List along with WP(CrI) No.109/2003 etc.

SLP(Cr)...Cr.MP 10319/2003.

Permission to file SLP granted.

Issue notice.

Ms.H.Wahi, learned counsel for the State of Gujarat, accepts notice. She prays for and is allowed two weeks' time to file reply.

Notice to other respondents shall be served through State of Gujarat within a period of two weeks.

Mr.Harish N.Salve, learned Amicus Curiae has moved a Crl.M.P.....in W.P.(Crl) No.109/2003 in Court. Let this Cr.M.P. be treated as Interlocutory Application and registered by the Registry. Issue notice.

Ms.H.Wahi, learned counsel for State of Gujarat accepts notice. She prays for and is allowed two weeks' time to file reply.

List altogether on 19th December, 2003.

[Naresh Kumar]
AR-cum-PS

[Janki Bhatia]
Court Master