

**Comments of the
Chairman SIT, Gujarat
on the
Enquiry Report
in
SLP (Cri.) 1088/2088**

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Filed by Smt. Jakia Nasim

❖ Introduction:

On an SLP (Crl) No.1088 filed on 18.12.2007 by Smt. Jakia Nasim Ahesan Jafri and Citizens for Justice & Peace, through its Secretary Ms.Teesta Setalvad, the Hon'ble Supreme Court ordered on 27.4.2009 as below:

"Having heard learned Counsel for the parties we direct that complaint dated 08.06.2006 which the petitioners herein claim to have sent to the DGP of Gujarat shall be examined by the Special Investigation Team (in short 'SIT') constituted pursuant to the orders of this Court. The SIT shall look into the matter and take steps as required in law and give its report to this Court within three months"

"Call this matter after three months"

"This case shall be heard along with Writ Petition (Crl.) No. 109 of 2003 and connected cases."

Pursuant to the Hon'ble Supreme Court's above order, and on the direction of the Chairman, SIT a Preliminary Enquiry (PE) into the complaint of Smt. Jafri was entrusted to Shri. A.K. Malhotra, Member, SIT to be handled solely by him. Accordingly, Shri. Malhotra commenced the PE in June 2009 and completed it on 11.5.10. During the course of the enquiry, he examined 163 witnesses. He also obtained numerous

documents relevant to the enquiry from several sources, including the Government of Gujarat.

Shri. Malhotra probed into 32 allegations during the enquiry and gave his findings in the attached report. His findings in respect of the more important allegations and comments thereon of the Chairman SIT are given below for the perusal of the Hon'ble Court and their further directions to the SIT.

✓ ALLEGATION No. I:

Against the advice of the Godhra Collector, Smt. Jayanti Ravi, bodies of Godhra carnage were taken in a ceremonial procession by road to Ahmedabad. The Godhra killings were used and manipulated to justify pre-orchestrated mass carnage that enjoyed the political sanction of the constitutionally elected Government.

It was the CM's decision to bring dead bodies of those killed in Godhra train fire in Ahmedabad and parade them in Ahmedabad City.

FINDING:

SIT enquiry revealed that there was in fact a discussion at Godhra on the final disposal of bodies of those killed in the Godhra carnage. This was during Chief Minister Narendra Modi's visit to the town on the afternoon of 27.02.02. It was held at the Collectorate. It is not clear who were all present or consulted. Apart from the District Collector, the presence at least of Gordhan Zadafia, MoS Home and Jaideep Patil, VHP activist has been confirmed. There was reportedly a consensus at the meeting in favour of handing over the identified bodies (4) to the relatives of victims who were present in Godhra itself. As regards the unidentified ones, the decision was to transport them to the Sola Civil Hospital, Ahmedabad. This was based on two factors: the torched Sabarmati Express was bound for Ahmedabad, and the Sola itself was in the outskirts of the city and would

therefore not attract curious crowds that could disrupt the process of further disposal of the bodies. The District Collector categorically denied to the SIT that the decision was taken against her wishes. Most importantly, the 54 unidentified bodies were transported to Ahmedabad around midnight, when there were hardly any crowds en route. By next afternoon, 35 of these bodies were handed over to relatives at Sola Hospital, after identification. (25 of these were of passengers from Ahmedabad.) The rest, viz., 19, were cremated en masse at a crematorium in the city, which was about a KM from the Sola Hospital. The charge that bodies were taken in a procession and paraded is therefore not established. (Vide pages 19-23 of the enquiry report.)

✓ ALLEGATION No. II:

Chief Minister Narendra Modi instructed the then DGP, Chief Secretary and other senior officials to allow Hindus to freely give vent to their anger at the minority Muslims in the wake of the Godhra incident. This instruction was given during the meeting held on 27.02.2002 evening in Gandhinagar. This information was conveyed by the late Haren Pandya, the then Minister of State, to the members of the Citizens' Tribunal headed by former Judge of the Hon'ble Supreme Court.

FINDING:

SIT enquiry clearly established that such a meeting was in fact held at the Chief Minister's residence on the night of 27.02.02, after the Chief Minister's return to Ahmedabad following his visit to Godhra earlier in the day. This was attended, among others, by the Chief Secretary and DGP. The meeting is learnt to have generally reviewed the law and order situation, when the Chief Minister reportedly instructed that the situation be handled firmly. No minutes were however kept.

When questioned by SIT, five of the confirmed participants denied that the Chief Minister ever asked the top to permit Hindus to give free vent to their outrage at

the Godhra attack on Sabarmati Express. However, Sanjiv Bhatt, SP. Intelligence told SIT, that only if there was a legal obligation arising from the registration of a regular criminal case, he would be duty bound to disclose facts of discussion at the meeting. This indicated he had some reservations about what transpired on the occasion. Bhatt is considered an unreliable witness, especially because no official, who is known to have definitely attended the meeting, has spoken of his presence there. Also, he was considered too junior to have been invited to such a high level meeting.

The only sources from which it could be ascertained as to what exactly transpired at the meeting were the seven established participants of the meeting. Two of them, viz., K. Nityanandhan, ADGP (now MD Police Housing Corporation and the then Secy. Home Department) and Anil Mukim, IAS (Secy. to CM in 2002 and now JS, Ministry of Commerce, Govt. of India, New Delhi) are the only serving officers, while the other five have retired. Of the latter, except DGP Chakravarthi and former Acting Chief Secretary Swarnakantha Verma, the other three had been accommodated in post-retirement jobs, and are therefore obliged not to speak against the Chief Minister or State government. Two participants pleaded loss of memory, and four (the ACS Home, DGP, CP and Principal Secretary to the CM) clearly denied that the Chief Minister ever gave such a direction.

There is also no corroboration to the former Minister of State, the late Haren Pandya's reported claim made on May 13, 2002 to the Citizens' Tribunal that he was present at the Chief Minister's meeting on 27.02.02, and that Chief Minister Narendra Modi expressed his view that there could be a Hindu backlash and that the Police should not 'come in the way.' The only Minister who could have attended the meeting at the Chief Minister's residence on the night of 27.2.02 was Gordhan

Zadafia, the then MoS Home, who was away in Godhra overseeing relief operations there.

I agree with the Enquiry Officer's finding that this allegation of illegal directions to State officials by the Chief Minister has not been established. (*Vide pages 14-19 of the enquiry report*)

➤ ALLEGATION No. III:

Cabinet Ministers I. K. Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively by the CM. DGP Chakravarthi was critical of the Minister I. K. Jadeja remaining in his chamber.

FINDING:

It has been conclusively established that the two Ministers were indeed operating from the two Control Rooms for a few days from 28.2.02 onwards. There is however no information to establish that they interfered with police operations during the time they were there. Nor is there information that this arrangement was at the instance of the Chief Minister himself, although there is every likely hood that this had at least his tacit approval. It is quite possible that DGP Chakravarthi was unhappy with this arrangement. He has, however, denied that he ever gave expression to his resentment, as suggested by Shri. R.B. Sreekumar, the then ADGP in his Affidavit before the Nanavati Commission and statement made before the SIT. (*Vide pages 28-32 of the enquiry report*)

➤ ALLEGATION No. IV:

There was undue delay in requisition and deployment of the Army, though anti-minority violence had broken out on 27.02.2002 afternoon itself in many cities including Vadodara and Ahmedabad.

FINDING:

There is information to the effect that, on 27.2.02, following the Godhra carnage earlier in the morning, the State government had alerted the Army authorities on a possible requirement for them to come to the assistance of the civil administration. The situation was reviewed at both the 27th night and 28th February, 2002, law and order meetings held by the Chief Minister. Once the State authorities came to the conclusion that the law and order situation had greatly deteriorated, the Chief Minister spoke to the Union Home Minister in the matter. This was followed by a FAX message on 28.2.02 afternoon to the Centre. Army columns started arriving in Ahmedabad during the night intervening February 28-March 1, 2002. Their deployment began the following day. It is clearly established therefore that there was no slackness on the part of the State government in summoning the Army. (*Vide pages 70-73 of the enquiry report*)

➤ ALLEGATION No. V:

Numerous illegal instructions were given verbally (by the CM) to officials as detailed in third affidavit dated 09.04.2004 by R.B. Sreekumar to the Nanavati Commission.

FINDING:

This allegation is based on the entries made by the then ADGP Sreekumar in a register that he had opened in April 2002, within a week of taking over as head of State Intelligence. The entries in question related to alleged illegal instructions that he had received from his superiors and some other functionaries, including the Chief Minister. These covered a wide range of matters, such as keeping a watch on certain individuals, monitoring of telephones, and a direction from the Chief Secretary that those who obstructed the Rath Yatra 'eliminated'.

It has been clearly established that the register was an unofficial document that Sreekumar was not authorized to maintain. It is further known that he had made some entries prior to the date on which he had opened the register, viz., the date on which he got the IGP Security & Administration certify to the total number of pages on the register. None of the witnesses, including the DGP, had been informed that such a register was in fact being maintained. The DGP clearly told SIT that the register had never been put up to him. Also, it is known that at least one entry therein was factually incorrect as stated by the then IG (Admn. & Security) Shri.O.P.Mathur. Further, the then Chief Secretary, Shri. G.Subbarao has disputed the veracity of an entry which charged that he had directed the 'elimination' of those who obstructed the Yath Ratra. Also, Shri.Sreekumar revealed the existence of the register to others only three years after he had opened it. This was again only after he had been passed over for promotion to the rank of DGP.

Taking all these factors into account, it is considered that the register is an unreliable document with no evidentiary value whatsoever. Also significant is that Sreekumar produced only a copy of the said register before the SIT. The very motive behind his maintaining such a register is therefore highly suspect. (*Vide pages 24-28 of the enquiry report*)

➤ ALLEGATION No. VI:

Officers from field executive posts were transferred (by the CM), in the thick of riots in 2002, despite DGP's objection, so as to facilitate placement of those who were willing to subvert the system for political and electoral benefits.

FINDING:

It is true that there were a few such transfers which were at questionable, especially because they came

immediately after incidents in which the officers concerned had known to have antagonised ruling party men. For instance, one S.C. Verma, DIG, Kutch- Bhuj Range was transferred out, after he had ordered the arrest of a sitting MLA, Shri. Shankar Chaudhary, belonging to the ruling party. (The MLA had been accused of the murder of two Muslim boys.) Another officer, Vivek Shrivastava, SP Kutch was shifted out to an insignificant job, following the arrest of a Home-guards Commandant (known to have links with the ruling party) for having attacked a Muslim woman with a sharp weapon inside a Dargah. Neither police officer would however admit he had been victimized. (*Vide pages 32-36 of the enquiry report*)

➤ ALLEGATION NO. VII:

The CM Shri Narendra Modi did not visit the riot affected areas in the initial days, though he visited Godhra Railway Station on 27.02.2002 itself.

FINDING:

This allegation has been established by the Chief Minister's own admission before the SIT. He did not cite any specific reasons why he did not visit the affected areas in Ahmedabad City as promptly as he did in the case of Godhra train carnage. (*Vide page 67 of the enquiry report*)

➤ ALLEGATION NO. VIII:

Chief Minister Narendra Modi made a press statement to the effect that the reaction against the Muslim community was the operation of the Newton's law of reaction.

FINDING:

The reference here is to the Chief Minister's interview given to the Zee TV correspondent Sudhir Chaudhary on 1.3.02. Zee TV authorities were contacted to obtain a copy of the interview recording. They have however not been able to

locate the same. We have therefore to rely on an account of what the CM said on the occasion given in a report (3rd May, 2002) RIGHTS and WRONGS authored by Aakar Patel, Dileep Padgaonkar and B.G. Varghese and published by Editors Guild of India, New Delhi.

During the interview, the Chief Minister had obviously attempted to balance his views on the Gulberg Society massacre by saying that he did not favour either 'action' or 'reaction'. However, while referring to the Godhra carnage, he did not mince words. He was openly critical of those who had committed the atrocity, saying that some persons from the particular area (Godhra) had a criminal tendency and were earlier involved in serious incidents, such as the killing of women teachers, and these elements had now gone to the extent of torching the Sabarmati Express and killing 40 innocent women and children. He added that what was happening in the State was only a 'reaction' to that heinous crime. When questioned by SIT, he was defensive, saying that if his response to the Zee TV correspondent was considered in the "correct perspective", it would be evident that there was a very earnest appeal by him to the citizens of the State to refrain from any kind of violence. (*Vide pages 67-69 of the enquiry report*)

➤ ALLEGATION NO. IX:

No direction was given by Shri Narendra Modi to Hindu organisations against the observance of Bandh on 28.02.2002.

FINDING:

This allegation has been established as per the admission of the State Home Department itself. (*Vide pages 69-70 of the enquiry report*).

➤ ALLEGATION NO. X:

Pro-VHP advocates were appointed as Public Prosecutors in riot cases as noted in Para 4 under the caption 'Present Situation' in the complaint dated 08.06.2006, wherein appointments of advocates Shri Chetan Shah (as District Government Pleader), Shri V.P. Atre (as Special PP in the Gulberg case), Shri Raghuvir Pandya (as Special PP in the Best Bakery case), Shri Dilip Trivedi (as Special PP in the Sardarpura case), Shri Rajendra Darji (as Special PP in the Dipda Darwaja case), Shri Piyush Gandhi (PP in Panchmahal District), have been questioned.

FINDING:

SIT enquiry has revealed that there was in fact a transparent procedure prescribed for the appointment of Public Prosecutors. The selection committee comprises the District Collector and District Judge who forward a panel of names to the government. Authority for the final choice from that panel however vests in the government. It has been found that a few of the past appointees were in fact politically connected, either to the ruling party or organizations sympathetic to it. (Vide pages 73-77 of the enquiry report)

➤ ALLEGATION NO. XI:

The State Home Secretary Shri G.C. Murmu was presumably detailed for tutoring, cajoling and even intimidating officials deposing before the Nanavati Commission so that they did not tell the truth and harm the interests of the CM and ruling party, as narrated in third Affidavit of Shri R.B. Sreekumar.

FINDING:

On receiving a summons from the Nanavati Commission, Shri.Sreekumar, the then ADGP (Police Reforms), sought the DGP's advice on how to respond to it. The latter told him that he should contact the Government Advocate Arvind Pandya for this purpose. At a meeting held by Pandya on 25.08.04 at Sreekumar's request, Home Secretary Murmu was also present. The evidence collected by SIT indicates that

Sreekumar was only briefed on the basic modalities of how to tender evidence before the Commission. He was counselled to be cautious, especially while being cross-examined. He was particularly advised to respond in such a manner that he did not open himself up to a longer cross-examination with more questions. Sreekumar regards such advice as one intended to intimidate him and prevent him from giving facts unfavourable to the government. The admission that he had clandestinely recorded the conversations on the occasion would itself raise questions about his intentions, especially when viewed together with a similar action in maintaining a clandestine register in which he had made entries at his will and convenience. Also relevant is the fact that he chose to produce a CD on this before the Nanavati Commission only along with his third Affidavit filed on 9.4.2005, nearly two months after he had been superseded. (*Vide pages 86-97 of the enquiry report*)

✓ ALLEGATION NO. XII:

According to information furnished by Ms. Teesta Setalva during the Preliminary Enquiry, two separate meetings were held by two different Hindu groups at Lunawada and Borwai, near Godhra (both in Panchmahals District) on 27.02.02 and 28.02.02 respectively, whereat plans were hatched to attack the minority community. Two sitting Ministers, Ashok Bhatt and Prabhatsinh Chauhan, had participated in the Lunawada meeting. Both arson and killings were discussed at the meetings.

FINDING:

A thorough enquiry was done in regard to these meetings. No evidence was unearthed to support the allegation. Actually the information proved to be incorrect and motivated. (*Vide pages 132-137 of the enquiry report*)

❖ ROLE OF INDIVIDUAL FUNCTIONARIES:

▪ Shri Narendra Modi, Chief Minister:-

1: The decision to transport unidentified bodies of Godhra victims to Ahmedabad was taken in Godhra on the evening of 27.2.02 in the presence of Chief Minister Modi. It has been described as a unanimous decision. There is no evidence to support the allegation that it was taken otherwise and against the wishes of the District Collector. Nor is there any evidence that the bodies were taken out in a procession with a view to inflaming Hindu passions.

2: Shri Modi held a meeting on the same night at Ahmedabad where a review of the situation was held with senior officials. The allegation that he directed the police to permit Hindus to give full vent to their outrage at the Godhra carnage was not established.

3: On 28.02.02 and following days, one Minister each was positioned in the State and City Police Control Rooms, at the instance of the State Government, with no definite charter. This fuelled speculations that they had been placed there with a view to interfering in police work and give wrongful directions to the field officers. Although there is no evidence that this was directly at the instance of Chief Minister Modi, the fact that he was the Cabinet Minister for Home would heighten the suspicion that this decision had his blessings.

4: On 01.03.02 Shri Modi was interviewed by the Zee TV on the situation arising from the riots. When asked about the Gulberg Society incident, Shri Modi referred to reports that Jaffri had first fired at the violent mob which infuriated the mob further, and led to their storming the society and setting it ablaze. He added: "*Kriya pratikrya ki chain chal rahi hai. Hum chahate hain kriya ho aur na pratikrya.*" The Zee TV reporter's interpretation of this statement was that 'action' referred to the

late Ex-MP, Ahesan Jafri's, opening of fire at the mob surrounding his house and 'reaction' was the mob's retaliation thereto.

Taking an overall view of this statement and his subsequent appeals for peace, it is difficult to opine that Shri Modi's intention was to provoke Hindu feelings against the Muslim community. Nevertheless, his further statement made during the interview accusing some elements in Godhra and neighbourhood as possessing a 'criminal tendency', was sweeping and offensive coming as it did from a Chief Minister, that too at a critical time when Hindu-Muslim tempers were running high.

5: Shri Modi visited Godhra promptly on the same day as the incident. Surprisingly however he took as many as 5 -6 days to do the same in the riot-affected areas of Ahmedabad, where Muslims were victims.

6: One allegation levelled by the complainants during the enquiry was that when the situation outside his house had become dangerous, Shri Ahesan Jafri, Ex-MP desperately called Chief Minister Modi over phone, but the latter did not help. According to one version, he was actually rude to Mr. Jafri. The latter was said to have used his landline, the only one in the whole of Gulberg Society. No records are however available on either side to corroborate this allegation. Shri Modi has also categorically refuted the allegation saying he never knew Mr. Jafri before the incident.

▪ **Shri Gordhan Zadafia, the then Minister of State, Home, Gujarat State:-**

He was the then Minister of State for Home. He was at Godhra on 27.02.02 overseeing relief operations. On the next day after his return to Ahmedabad, he was in telephonic touch with the accused in the two Naroda Police Station

cases involving about 100 Muslim casualties. Although no credible evidence has come on record so far to suggest his involvement in the riots, it is considered by SIT that there is a need for a further probe into any possible role played by him through further investigation in the two cases already chargsheeted in respect of the incidents.

- **Shri G.Subba Rao, the then Chief Secretary, Government of Gujarat:-**

He was the State Chief Secretary during the period. However, he was away abroad for a week beginning 22nd February. He returned on 1st March cutting short his trip. Although he is known to be a favourite of the government and was given a five-year term as Chairman, Electricity Authority after his retirement, he did not come to any adverse notice. Two allegations made against him by ADGP Sreekumar were found without any substance

- **Shri K.Chakravarthi, the then DGP Gujarat**

He was the State DGP during the riots. He was active monitoring the situation and giving appropriate instructions to those working under him for bringing the situation under control. That he was no favourite of the government would be borne out by the fact that he was not given any post-retirement assignment. He was DGP only by virtue of his seniority.

- **Shri.P.C.Pande, the then Commissioner of Police, Ahmedabad City:-**

He was Commissioner of Police, Ahmedabad during the riots. He was quite active on the 28th February and subsequent days. He was proactive in responding to distress calls. The only criticism that one can level against him is that on 28.02.02, the worst days of the riots, he was mostly confined to his office, did not directly handle any field situation, and chose to content with giving telephonic directions to his officers.

The allegation that he had switched off his cell phone on 28.02.02 making it difficult for the victims to contact him is baseless. SIT enquiry revealed that he had received/called at regular intervals from that phone, in fact more than 300 times that day. His defence is that he was required to stay at one place in order to coordinate the operations. He retired as DGP of the State on 30.04.09, and has since been made Chairman of the State Police Housing Corporation.

- Shri.Shivanand Jha, the then Addl. CP, Ahmedabad City:-

A member of the SIT, Shri Jha was Additional CP, Sector I, Ahmedabad City during the riots. He attended to all calls of distress received by him promptly, and personally went to trouble spots and got FIRs registered in respect of each and every incident. He ordered arrests wherever required and the opening of fire in many spots where the mobs were indulging in violence. He was responsible for shifting to safety, 80 Muslims taking shelter in a mosque, which had been surrounded by a Hindu mob. In another incident (05.04.02), at Sabarmati Police Station, 76 Muslims had been called to the place for questioning in a stabbing case. The police station was then surrounded by a 5 to 10,000 strong Hindu mob. Shri.Jha, who was at the police station at that time, opened fire and saved the situation. One Hindu was killed. Of the 76 Muslims at the police station, 12 were arrested and the rest sent back to their homes safely. Again, on 07.04.02, it was Shri Jha who personally rescued Ms. Medha Patkar, the social activist, when she was attacked by BJP workers inside the Gandhi Ashram. Following this, he was transferred out of the City Police on 09.04.02 to the State Reserve Police in the distant Rajkot. This transfer was widely criticized by the press

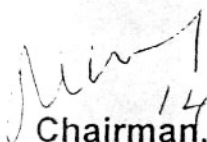
- Shri M.K.Tandon, the then Joint CP, Sector II, Ahmedabad City (since retired):-

The areas of Meghaninagar, Naroda Pathia and Naroda Gam were the worst affected for the violent attacks on minorities on 28.02.02. They accounted for a total of 145 deaths. These came under the jurisdiction of Shri M.K. Tandon, JCP Sector II, Ahmedabad City. On that day, Tandon was in Gulberg Society (Meghaninagar P.S.) around 1130 hrs. when there were minor incidents of stone pelting by a small crowd, which was later dispersed through firing of tear gas shells. He left Meghaninagar around 1145, after instructing the Senior Police Inspector (PI) Erda to monitor the situation, as the locality had an essentially minority population. He proceeded to Naroda Patiya, about 4-5 KM away, which place he reached around noon. Since the situation there was tense, after consulting the CP Shri Pande, he imposed a curfew. While at Naroda Patiya he received alarming messages twice (1220 and 1238 hrs.) from Police Inspector (PI) Erda about the Gulberg situation. He did not however act on these and also did not rush to Gulberg Society. Instead, he proceeded to Bapu Nagar-Rakhial and Dariyapur (about 6-7 KM from Meghaninagar) from where, around 1405 hrs., he asked the Control Room to send additional forces to Gulberg Society to shift Ahesan Jafri, ex-MP and others surrounded by a violent mob. While at Dariyapur he received two wireless messages (1414 and 1445 hrs.) informing him that the situation in Meghaninagar had worsened and the Gulberg Society (where former MP Ahesan Jafri resided) had been encircled by a mob of few thousands and there was an imminent danger of it being set on fire. Instead of his rushing there, he now claims, that he directed DCP Zone IV Shri P.B. Gondia to go to Gulberg Society. (The DCP has refuted this claim.) At about 3.35 PM, while at Dariyapur, he received a call informing him that the Society had been set ablaze. Tandon ultimately reached Gulberg

handedly, as associating any Gujarat officer in such a sensitive enquiry would not have been desirable. For reasons of confidentiality, secretarial assistance to him was modest, in that he had only one person to do the scriptory work. He had to put in extraordinarily long hours and examine more than 160 witnesses, many of whom were non-cooperative and intentionally delayed appearing before him after receiving the notice. It may also be mentioned here that evidence collection in this enquiry was an extremely arduous task because of the lapse of time of eight years since the occurrence of the incidents probed. Another factor was the reluctance of many crucial witnesses to depose frankly and without inhibition, because the complainants had mindlessly and mechanically referred to these witnesses as 'accused', a branding that had caused great offence to many of the witnesses.

❖ **Prayer:**

It is prayed that this Hon'ble Court may consider treating this report as well as the enclosures thereto confidential, as their disclosure could adversely affect the ongoing trials and also lead to needless litigation between parties based on statements made to the SIT.


14/5/2010
Chairman,
Special Investigation Team
Gandhinagar
Gujarat