ANIL YADAV & ORS.

v.

STATE OF BIHAR & ANR.

March 23, 1982

[Y.V. CHANDRACHUD, C.J., A. VARADARAJAN AND AMARENDRA NATH SEN, JJ.]

Constitution of India 1950, Art.32—Habeas Corpus petition—Respondent a government official directed to file affidavit—Official suspended by government—Suspension Order whether can be challenged in incidental proceedings.

The second respondent who was the Superintendent of the Bhagalpur Central Jail was suspended by the State Government on the ground that he was negligent in providing proper medical aid to the blinded undertrial prisoners inside the jail and that he had failed to make entries in the jail register as regards the physical condition of the undertrial prisoners.

In a Miscellaneous Petition filed by him he claimed that his order of suspension be quashed as it was passed *mala fide* with the object of preventing him from filing the affidavit as directed by the Court.

The State Government contested the petition contending that the respondent was suspended for his failure to comply with the requirements of Rule 474 (1) of the Bihar Jail Manual in that he did not scrutinise and sign the entries made in the Admission Register maintained at the jail to satisfy himself whether those entries were correct and whether the relevant rules in regard to the admission of the prisoners were complied with. He did not also record any 'special order' under Rule 474 (2) regarding the medical treatment given or to be given to the blinded prisoners with the result that they were not sent for examination to any eye specialist. He did not make a report on the blindings of the prisoners and, he supplied to newspapers his own version of the blindings.

Dismissing the petitions,

HELD: Ordinarily an order of suspension cannot be challenged in an incidental proceeding but it was heard since the allegation was that the petitioner was suspended in order to defeat the order passed by this Court. [539 E]

2. The order of suspension was not passed by the Government *mala fide* as a counter-blast to the order passed by this Court on December 1, 1980 and to defeat it. [540 F]

3. The allegation that the motive behind the order was to frustrate the purpose of the Court's direction calling upon the petitioner to file an affidavit is not proved. The evidence on record indicates that the State Government officials were enquiring into the blindings of the under-trial prisoners and there is a report in the Government files recommending that the petitioner be suspended for dereliction of duty. It cannot be said that this report was prepared later and antedated to justify the order of suspension. [540 G-H; 541 A-B]

4. By placing the petitioner under suspension the State Government could not prevent him from filing an affidavit in Court. He was free to file his affidavit and in fact he filed an affidavit after suspension. [541 C]

5. The petitioner will be at liberty to challenge the order of suspension in a properly constituted proceedings on such grounds as may be open to him including the ground that the order was passed *mala fide*. [541 F]

ORIGINAL JURISDICTION : Criminal Misc. Petitions Nos. 8774 of 1980 & 2581 of 1981.

IN

Writ Petition No. 5352 of 1980.

(Under Article 32 of the Constitution)

B.L. Das Petitioner-in-person.

K.G. Bhagat and *D. Goburdhan* for the Respondent (State).

R.N. Poddar for the Respondent (CBI).

The Order of the Court was delivered by

CHANDRACHUD, C.J. These Misc. Petitions are an off-shoot of the blindings of undertrial prisoners at Bhagalpur in the State of Bihar. Truth has a strange habit of revealing itself and in spite of the veil of secrecy behind which the blindings of those prisoners lay concealed or suppressed, this Court and the country awoke one day to the incredible fact that, in Bhagalpur, undertrial prisoners were subjected to the most inhuman torture imaginable : their eyes were pierced with needles and acid poured into them. Whether these barbarous acts were committed by members of the public after the prisoners were caught or by the police after they were arrested, is not a matter directly in issue before us. The greater probability is that these acts may have been committed mostly by the police.

But this much is certain, that six prisoners were thus blinded between October 1979 and May 1980 and twelve between June 11 and July 25, 1980. The petitioner Bachcho Lal Das, who has filed these Misc. Petitions, had assumed charge as the Superintendent of the Bhagalpur Central Jail on April 19, 1979.

On October 26, 1979 a prisoner by the name of Arjun Goswami was sent to the Bhagalpur Central Jail. On November 20, 1979 he addressed an application to the Chief Judicial Magistrate, Bhagalpur, asking that an inquiry be held into the torture inflicted upon him, especially the blinding of his eyes. That application was forwarded by the petitioner to the Chief Judicial Magistrate. Later, eleven prisoners made similar complaints which were forwarded by the petitioner to the learned Sessions Judge, Bhagalpur, on July 30, 1980. The complaints made by these prisoners unquestionably demanded the most prompt and careful attention. But, instead of directing a full and proper inquiry into the allegations made by the undertrial prisoners, the learned Sessions Judge, on August 5, 1980, sent a cold and indifferent reply to the petitioner's covering letter, saying that "there is no provision in the Cr. P.C. to provide a lawyer to any person for prosecuting a criminal case as a complaint" and that the petitions of the prisoners were forwarded to the Chief Judicial Magistrate, Bhargalpur, "for needful in accordance with law."

On October 9, 1980, ten blinded prisoners filed a Habeas Corpus petition in this Court (Criminal Writ Petition No. 5352 of 1980) asking that : (1) they should be produced in the Court, (2) they should be examined by a Medical Board, (3) they should be paid compensation for the damage done to their eyes and that (4) the police officers guilty of committing atrocities upon them should be suitably punished. On October 10, 1980 a Bench of this Court consisting of one of us, (the Chief Justice), and Justice A.D. Koshal passed the following order in that petition :

> "We direct that the petitioners shall be examined by the Jail Doctor forthwith and a report shall be submitted to this Court expeditiously in regard to the allegation in the petition that their eyes have been damaged by certain police officers by putting acid therein. The report shall be submitted within four weeks from today. The W.P. be listed for hearing after the report is received."

By his letter dated October 31, 1980 the petitioner, who is respondent 2 in the Habeas Corpus petition, forwarded to this Court the report of the Jail Doctor on the condition of the eyes of the prisoners. The remaining 2 prisoners were already released and could not therefore be examined. The report of the Jail Doctor in regard to one of the prisoners, Anil Yadav, is representative of the condition of all the eight of them and may be extracted here :

"(1) Presence of old burn scar around both the eyelids of both the eyes and on left cheek.

(2) Collapse of both the eye balls.

(3) Perception of light and projection of rays absent in both the eyes.

(4) Eye sight of both the eyes lost.

The cause is perforation of eye balls by burn with some corrosive substance and puncture by some sharp and pointed weapon.

From the records of Jail Hospital it is known that he was admitted in Jail Hospital on 8.7.1980 for acid burn injury of both the eyes."

On December 1, 1980, the Court (the Chief Justice and Chinnappa Reddy, J.), while directing that the prisoners be brought to Delhi the following week and be examined at the Dr. Rajendra Prasad Opthalmic Institute, New Delhi, passed the following order :

"The report of the doctor which we had called for by our Order dated October 10, 1980 shows that eight out of the ten petitioners before us have lost their eye-sight totally or partially. The report submitted by Dr. K.S. Roy in each individual case shows that :

(i) most of the petitioners are suffering from collapse of one or both of the eye-balls ;

(ii) the sight of one or both of their eyes is lost ;

(iii) there is perforation of their eye-balls by burn with a corrosive substance and that

(iv) their eyes have been punctured by some sharp and pointed weapon.

The remaining two petitioners have been released and therefore no report could be sent regarding them.

The report of the doctor will shock the conscience of mankind. There has been the most flagrant violation of the safeguards provided by Articles 19 and 21 of the Constitution. There is nothing that the Court can do to restore the physical demage, which seems irreparable. But the offenders must at all events be brought to book, at least in the hope that such brutal atrocities will not be committed again.

With that end in view, we direct the Superintendent of the Bhagalpur Central Jail to file an affidavit in this Court within two weeks from to-day stating :

(a) the names of convicts and undertrial prisoners in the jail whose eyes have been damaged or impaired before or after their lodgement in Jail ;

(b) the names of policemen, police officers and the members of the jail staff who were in charge of those prisoners at the relevant time ;

(c) the names of doctors who were in charge of the jail dispensary or hospital at the relevant time ; and

(d) the names of doctors who have examined, from time to time, the petitioners and other prisoners whose eyes have been damaged or impaired after their lodgement in jail.

We direct that the Registrar of the Supreme Court and one other officer of the Court shall visit the Bhagalpur Central Jail during this week and obtain first-hand the version of the petitioners and other prisoners similarly situated as regards the impairment or blinding of their eyes. The two officers of the Court shall be granted every facility

A to meet the prisoners, to talk them beyond the hearing of any jail officer or police officer and to record the statements of the prisoners. We direct the Jail Superintendent to ensure due and full complince with these directions.

B Issue notice to the State of Bihar asking it to show cause on the petition as also as to why the petitioners should not be released on bail on their personal recognizance."

C Shri R. Narasimhan, Registrar (Judicial) and Shri Y. Lal, Assistant Registrar of this Court visited the Bhagalpur Central Jail on December 3 and 4, 1980 and recorded the statements of 17 prisoners who were blinded. These statements show that 15 out of the 17 prisoners were blinded by the police and the remaining 2, whose names appear at Serial Nos. 14 and 15 of the report of the D Registrar, were blinded by the members of the public. The method adopted for blinding the undertrial prisoners, as described by the prisoners themselves, was that a 'takwa' (a long needle used for stitching gunny bags) or a barber's nail-cutter or a cycle spoke was poked into their eyes and acid was poured into the eyes, sometimes with the help of a dropper, sometimes with a syringe and some- E times directly from a bottle. It is alleged that the prisoners were held firmly on the ground by policemen who either pulled the ropes tied to their feet or sat upon their feet.

The Registrar questioned the Petitioner, Bachcho Lal Das, in F Delhi. The petitioner stated to him that as many as 31 blinded prisoners were brought to the Jail under orders of remand issued by the Magistrate and that they were given medical treatment by the Jail Doctor. According to the petitioner, he got a blinded prisoner Umesh Yadav examined by the Jail Doctor, since the report of the doctor was required by the learned District and Sessions Judge, G Bhagalpur, in connection with a bail application filed by the prisoner. The petitioner disclosed to the Registrar that he had made inquiries from Umesh Yadav, who told him that V.K. Sharma, D.S.P., had thrust a long needle in both of his eyes and had poured acid into the eyes. The other blinded persons appear to have taken H a cue from Umesh Yadav and submitted similar petitions for being forwarded to the District and Sessions Judge. The petitioner disclosed to the Registrar the names of the police officers who

were involved by the prisoners as being responsible for their blindings. A

It may be recalled that this Court by its order dated December 1, 1980 had directed the petitioner, who was then the Superintendent of the Bhagalpur Central Jail, to file an affidavit within two weeks on Points (a) to (d) mentioned in that order. On that very day, the petitioner was suspended by the Government of Bihar on the ground the he was negligent in providing proper medical aid to the blinded undertrial prisoners inside the Jail and that he had failed to make proper entries in the Jail Register as regards the physical condition of the undertrial prisoners. On December 10, 1980 the petitioner filed the main Misc. Petition in this Court in the Writ Petition filed by the blinded prisoners. He prays that the order of suspension dated December 1, 1980 be quashed, since at was passed by the State of Bihar *mala fide* with the object of preventing him from filing an affidavit in pursuance of the direction issued by this Court on December 1, 1980. B C D

We would not have entertained a petition of this nature in the normal circumstances, because an order of suspension cannot be challenged in this manner in an incidental proceeding. We, however, decided to hear the Misc. Petitions filed by the petitioner for quashing the order of suspension, since he alleged which, at first blush, seemed plausible, that he was suspended in order to defeat the order passed by this Court on December 1, 1980. E

The petitioner appeared in person before us and argued his case at great length. We gave him all reasonable facilities to substantiate his contentions, which he did with the help of the voluminous record prepared by him. Having considered the submissions of the petitioner and those of Shri K.G. Bhagat, who appeared on behalf of the State of Bihar, we are of the opinion that there is no merit in the complaint of the petitioner that he was suspended on December 1, 1980 in order to prevent him from complying with the order passed by this Court on that day and with the ulterier object of defeating that order. F G

Shri Ambika Prasad Poddar, Assistant Inspector General of Prisons, Bihar, has filed an affidavit in this Court, settting out the circumstances in which and the reasons for which the petitioner was suspended by the Government of Bihar. The case made out in that H

affidavit is that the petitioner failed to discharge his official functions enjoined upon him by Rule 474 (1) of the Bihar Jail Manual, in that he did not scrutinise and sign the entries made in the Admission Register maintained at the Central Jail, in order to satisfy himself whether those entries were correct and whether the relevant rules in regard to the admission of the prisoners were complied with. It is stated in the affidavit that contrary to Rule 474 (2), the petitioner failed to record any 'special order' regarding the medical treatment given or to be given to the blinded prisoners, with the result that they were not sent for examination to any eye specialist either in the Jail or at the Bhagalpur Medical College Hospital. Though the District Magistrate, Bhagalpur, had given his approval on October 21, 1980 to the proposal for sending the blinded prisoners for specialised treatment at the Bhagalpur Medical College Hospital, the petitioner; it is alleged, neglected to discharge his duty and sent the prisoners for medical treatment to the Hospital ten days later on October 31, 1980. According to Shri Ambika Prasad, Poddar, the petitioner omitted to make a report on the blindings of prisoners lodged in the Jail which was under his charge, he did not hold a parade of the prisoners nor did he make the weekly inspection of the Jail, and on the top of it all, he supplied to newspapermen his own one-sided version of the blindings. The suspension order, according to Shri Poddar, was passed on the basis of the various rules and notifications governing the conditions of the petitioner's service and was not passed in order to frustrate or defeat the order passed by this Court on December 1, 1980.

On a careful consideration of the aforesaid affidavit and the arguments advanced before us by the parties, we find it difficult to accept the petitioner's contention that the order of suspension was passed by the Government of Bihar *mala fide*, that is to say, as a counterblast to the order passed by this Court on December 1, 1980 and to defeat it. The question for inquiry in these Miscellaneous Petitions is very narrow and limited. The question is not even whether the order of suspension is *mala fide* in a broad and general sense, covering the entire gamut of extraneousness. The question before us is whether the motive behind the order was to frustrate the purpose of our direction calling upon the petitioner to file an affidavit, That charge is not substantiated and is difficult to accept. It appears that officers of the State Government were enquiring into the blindings of the undertrial prisoners at least from November 27, 1980. There is a report dated December 1, 1980 in the Goverment

files, which was produced before us by Shri K.G. Bhagat, by which Shri L.V. Singh, Deputy I.G.P. (Prisons), recommended that for reasons of dereliction of duty the petitioner should be suspended. We find it quite difficult to accept the petitioner's contention that the report of Shri Singh was prepared later and was antedated in order to justify the order of suspension.

We are also unable to appreciate how the State Government could prevent the petitioner from filing an affidavit as directed by this Court, by placing him under suspension. The petitioner would be free to file his affidavit in spite of the order of suspension and in fact he has filed an affidavit in this Court after he was suspended. During the course of arguments before us, he produced photostat copies of quite a few documents, which also show: that the order of suspension is not calculated to interfere with the direction given by this Court, asking the petitioner to file his affidavit. If we had found that by reason of the order of suspension the petitioner was prevented from filing his affidavit, we would not have hesitated to ask the Government of Bihar to supply copies of nccessary documents to the petitioner in order to enable him to file a full and complete affidavit in compliance with our order.

The Miscellaneous petitions have therefore to be dismissed. We would, however, like to state that we are not called upon to consider in these incidental proceedings, and we have in fact not considered, the question of the validity of the order of suspension dated December I,1980. The petitioner will be at liberty to challenge that order, if so advised, in a properly constituted proceedings, on such grounds as may be open to him including the ground that the order was passed *mala fide*. We have only dealt with the narrow question as to whether the order of suspension was passed with the object of preventing the petitioner from filing an affidavit in this Court and on that question we have rejected the petitioner's contention that the order of suspension was passed for that purpose. We have not inquired into the question whethcr the order of suspension is vitiated by *mala fides* for any other reason.

It is desirable and but proper that the State Government ought not to visit the petitioner with any penalty or punishment for app-

A roaching this Court or for having attempted to lay before this Court, what according to the petitioner, was the truth of the matter in regard to the bizarre blindings of the under trial prisoners.

Order accordingly.

B

N.V.K. *Petitions dismissed.*