

PETITIONER: SHRI DILIP K. BASU ETC.ASHOK K. JOHARI

Vs.

RESPONDENT: STATE OF WEST BENGAL & ORS.

DATE OF JUDGMENT: 01/08/1997

BENCH: A.S. ANAND, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT: THE 1ST DAY OF AUGUST, 1997

Present:

Hon'ble Dr. Justice A.S. Anand

Hon'ble Mr. Justice K.T. Thomas

Dr. A.M. Singhvi, Additional Solicitor General (A.C.), Ms. Suruchi Agarwal, Sushil Kumar Jain, Y.P. Dhamija, B. Krishna Prasad, Ms. A. Subhashini, B.B. Singh, Uma Nath Singh, B.S. Chahar, Ashok Mathur, Ms. Hemantika Wahi, Ms. Nandini Mukherjee, Kailash Vasdev, C.K. Sasi Raj Kumar Mehta, Dilip Sinha, K.R. Nagaraja, Ms. S. Janani, Aruneshwar Gupta, G. Prakash, Ms. Beena Prakash, Shakil Ahmed Syed, S.N. Jadhav, D.M. Nargolkar, A.S. Pundit, R.B. Misra, Gunture Prabhakar, Prem Malhotra, M. Veerappa, R.S. Sodhi, J.K. Manhas, V. Krishnamurthy, D.N. Mukherjee, T. Sridharan, Gopal Singh, D.S. Mehra, Ms. Kamakshi Singh Mehlwal, V.G. Pragasam and Ms. Kamini Jaiswal, Advs. with him for the appearing parties.

The following Order of the Court was delivered:

WITH

WRIT PETITION (CRL) no. 592 OF 1987

ORDER

On December 18, 1996 in D.K. Basu Versus State of West Bengal (1997 (1) SCC 416), this court laid down certain basic "requirements" to be followed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent custodial violence. The requirements read as follows.

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person know to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illega Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room could be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

This court also opined that failure to comply with the above requirements, apart from rendering the official concerned liable for departmental action, would also render him liable to be punished for contempt of court and the proceedings for contempt of court could be instituted in any High Court of country, having territorial jurisdiction over the matter. This Court further observed:

"The requirements mentioned above shall be forwarded to the Director General of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the national Network of Doordarshan any by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability.

It is hoped and accountability. It is hoped that the requirements would help to curb, if not totally eliminate, the use of a questionable methods during interrogation and investigation leading to custodial commission of crimes."

More than seven months have elapsed since the directions were issued. Through these petitions, Dr. Singhvi, the learned Amicus Curiae, who had assisted the Court in the main petition, seeks a direction, calling upon the Director General of Police and the Home Secretary of every State/union Territory to report to this Court compliance of the above directions and the steps taken by the All India Radio and the National Network of Doordarshan for broadcasting the requirements.

We direct the Registry to send a copy of this application, together with a copy of this order to respondents 1 to 31 to have the report/reports from the Director General of Police and the Home Secretary of the concerned State/Union Territory, sent to this Court regarding the compliance of the above directions concerning arrestees. The report shall indicate in a tabular form as to which of the "requirements" has been carried out and in what manner, as also which are the "requirements" which still remain to be carried out and the steps being taken for carrying out those. Report shall also be obtained from the Directors of All India Radio and Doordarshan regarding broadcasts made.

The notice on respondents 1 to 31, in addition, may also be served through the standing counsel of the respective State/union Territories in the Supreme Court. After the reports are received, copies of the same shall be furnished to the Advocate on Record for Dr. Singhvi, Ms. Suruchi Agarwal, Advocate.

The reports shall be submitted to this court in the terms, indicated above, within six weeks from today. The matters shall be put up on board for monitoring, after seven weeks.