



International Environmental
Law Research Centre

SPECIAL LEAVE PETITION (CRIMINAL) OF 2003

(Against the Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara,
Gujarat passed in Sessions Case No.248 of 2002 APPEALED FROM)

in the matter of

**NATIONAL HUMAN RIGHTS COMMISSION
(PETITIONER)**

Versus

**STATE OF GUJARAT AND OTHERS
(RESPONDENTS)**

with CRL.M.P.NO. _____ of 2003- Application For Exemption From Filing Certified Copy Of Impugned Judgment And Order;
and CRL.M.P. NO. _____ of 2003 - Application For Ad-Interim Exparte Stay Directions; and CRL.M.P. NO. _____ of 2003 -
Application For Permission To File Special Leave Petition Against The Judgment And Order Dated 27.6.2003 Of The Addl. Sessions
Judge Directly In This Hon'ble Court; and CRL.M.P. NO. _____ of 2003 - Application For Permission To Urge Additional Facts;
and CRL.M.P. NO. _____ of 2003 - Application For Exemption From Filing Official Translation

**IN THE SUPREME COURT OF INDIA CRIMINAL
APPELLATE JURISDICTION**

ADVOCATE FOR THE PETITIONER: S.Muralidhar

*This paper can be downloaded in PDF format from IELRC's website at
<http://www.ielrc.org/content/c0302.pdf>*

Table of Content

SYNOPSIS AND LIST OF DATES	1
SPECIAL LEAVE PETITION (CRIMINAL) NO. __ OF 2003	4
P R A Y E R	21
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003	22
CERTIFICATE	22
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003	23
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003	24
PRAYER	25
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003	26
CRL.M.P. NO. _____ OF 2003	28
PRAYER	29
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003	30
PRAYER	31
PRAYER	33
Member	35
Recommendations	41

SYNOPSIS AND LIST OF DATES

The NHRC is filing this Special Leave Petition under Article 136 of the Constitution directly against the judgment and order dated June 27, 2003 passed by the Additional Sessions Judge, Fast Track Court No.1 in Sessions Case No.248 of 2002 (State v Rajubhai Dhamirbhai Baria and Others) (hereinafter referred to as the 'Best Bakery Case'). By the said judgment and order dated 27.6.2003, the learned Trial Court has acquitted all the 21 accused involved in the killing of 14 persons on the intervening night of 1st/ 2nd March 2002 in the building of the Best Bakery situated in Hanuman Tekri area of Vadodara in Gujarat.

The petitioner is a statutory body constituted under s.3 of the Protection of Human Rights Act, 1993 (PHRA). The preamble states that the PHRA is "An Act to provide for the constitution of a National Human Rights Commission, State Human Right Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto". The NHRC has been entrusted with several functions under s.12 PHRA. Under s.12 (a) the NHRC can enquire into violation of human rights or the negligence by a public servant in the prevention of such violation. Under s.12 (b) the petitioner can "intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court" and under s.12 (j) it can perform "such other functions as it may consider necessary for the promotion of human rights". Further, under s.18 (2) PHRA, the NHRC can approach the Supreme Court or the High Court for such directions, orders or writs as that Court may deem necessary.

The judgment of the trial court in the Best Bakery case is testimony to the failure of the criminal justice system in the State and the failure to ensure a fair trial which is, apart from being a fundamental right enshrined under Article 21 of the Constitution, also a human right as spelt out under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) to which India is a party. S.2(1) (d) PHRA defines 'human rights' to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." S.2(1)(f) defines 'International Covenants' to mean, inter alia, the ICCPR.

As recorded in the impugned judgment of the trial court, as many as 37 of the 73 prosecution witnesses including the key eye witnesses during their deposition at the trial resiled from their earlier statements made to the police during investigation. This inevitably led to the collapse of the prosecution case and the acquittal of all the 21 accused. The trial court has itself noted in its impugned judgment that "it is very difficult for a common man to understand that in judicial proceedings involving crime of such a large magnitude, nobody has been convicted and punished." However, the court felt constrained by its inability to find out who the real offender was or to award compensation to the victims of the crime. The court further summed up the pathetic state of affairs thus: "there is not even an iota of evidence produced on the record of the case which can be legally accepted and which even remotely connects the accused with the charges levelled against them."

The trial court has observed: "From the case papers of the police investigation, there appears to be clear circumstances to believe that the police officers have abruptly and arbitrarily recorded the so called statements of the witnesses subsequently and have falsely incorporated the names of the accused persons" (para 42).

Further, the trial court has concluded: "In short, there is no cogent, reliable and legal evidence produced on record before this court so as to establish guilt against the accused who are produced before this court. Looking to the circumstances of the case, it clearly transpires from the judicial scrutiny of the evidence produced on record of the case that totally false evidence has been created against wrong accused" (para 45).

One of the principal prosecution witnesses, Shaikh Zahira Bibi Habeebullah, some of whose next of kin were the victims of the carnage at the Best Bakery has, subsequent to the impugned judgment of the trial court, made a statement to the petitioner and elsewhere in press conference and to the media that she had, during her deposition in court, resiled from her earlier statement made to the police on account of pressure and threats to her life and the lives of surviving members of her family. She has also named certain persons who were responsible for her resiling from her earlier statement. It is apparent that the atmosphere in which the trial was conducted was not conducive to the prosecution witnesses deposing in a fair and fearless manner. It is submitted that the entire trial stands vitiated on account of the failure by the State to afford protection to the victims and key prosecution witnesses in the case.

The petitioner is constrained to approach this Hon'ble Court under Article 136 of the Constitution concerned about the violation of the fundamental and human rights of the victims of the crime to a fair trial and for justice. The petitioner seeks to invoke the extra-ordinary powers of this Hon'ble Court under Articles 136 and 142 of the Constitution to set aside the erroneous order of acquittal passed by the trial court, to order further investigation into the entire case by an independent investigating agency and to direct retrial.

That the failure of the trial court, after making the observations referred to above, to order further investigations before concluding the trial has put the credibility of the justice delivery system under a serious challenge. In this context, the petitioner submits that:

- (i) That a criminal trial is not a mere formality. When an offence is committed and the Court is seized of the case either through complaint or police report, it becomes the duty of the Court to ascertain the truth and render justice. Failure to do so results in miscarriage of justice.
- (ii) Whenever a criminal goes unpunished, it is the society at large which suffers because the victims become demoralized and criminals encouraged. It therefore, becomes duty of the Court to use all its powers to unearth the truth and render justice so that the crime is punished.
- (iii) That s.173(8) Cr.PC. was introduced by the Parliament in 1973 to make it expressly clear that merely because an investigating agency has sent a police report to the Magistrate, it will not stand precluded from making further investigation into the case and submitting further report/s to the Magistrate regarding additional evidence gathered thereby. The investigating agency may exercise this option either of its own or when directed by the trial court. A supplementary chargesheet can be filed even after cognizance has been taken on police report by a court u/s 173(2) Cr.PC.

The petitioner is approaching this Hon'ble Court seeking the setting aside of the impugned judgment of the trial court in the Best Bakery Case and seeking directions for further investigation by an independent agency and retrial of the case in a competent court located outside the State of Gujarat.

The petitioner is approaching this Hon'ble Court since the directions sought for from this Hon'ble Court for a retrial of the case outside the State cannot be given by the High Court and can only be given by this Hon'ble Court. The petitioner is also seeking, by a separate petition, the transfer of certain critical pending cases in the State of Gujarat arising out of the incidents of communal violence that took place between February and May 2002 to courts outside of the State of Gujarat.

27.2.2002 On 27th February 2002, the Sabarmati Express train coming from Faizabad to Ahmedabad was attacked by a large crowd near the Godhra Railway Station and was set on fire. 58 persons were burnt alive and more than 40 passengers received injuries.

28.2.2002 A call for a Gujarat Bandh was given for 28th February 2002. Meanwhile, incidents of communal violence were reported from several areas in the State of Gujarat on 27th/ 28th February 2002. By March 1st 2002 curfew was clamped in about 35 towns/ cities (night curfew in some of them) and in parts of Ahmedabad, Vadodara and Rajkot cities.

1.3.2002 On 1st March 2002, the NHRC took suo motu action on the basis of media reports, both print and electronic. Notices were issued to the Chief Secretary and Director General of Police, Gujarat for their reply within three days indicating the measures being taken and in contemplation to prevent any other escalation of the situation in the State of Gujarat which is resulting in continued violation of the human rights of the people.

1.3.2002 It transpires that at about 8.35 pm on 1st March 2002, an incident of rioting, arson and mischief by a mob took place in the vicinity of the Best Bakery i.e., in Gajra Vadi, Shiv Nagar, Ganesh Nagar and Hanuman Tekri. On receiving this message through the police control room, mobile van no.1 of police station Panigate, reached Best Bakery via Gajra Vadi, Shiv Nagar, Ganesh Nagar and found a 1000-1500 strong mob near Best Bakery. The police in the mobile van sought to disperse the crowd by announcing that the curfew was on. The police records reveal that although the mob outside Best Bakery was disbursed, no steps were taken by the police to protect the lives and property of the occupants of the Best Bakery and to prevent recurrence of any incident. Thus, on 1st March 2002 at around 10.30 pm, the mob reassembled at Best Bakery and set it on fire.

1/2.3.2002 The aforementioned mob which included the 21 accused persons attacked the Best Bakery Building, threw stones and set it on fire. According to the police records, the said fanatical crowd along with the 21 accused persons continued attacking the Best Bakery Building and robbed it of maida, oil sugar worth Rs.75,000/-; also set fire to the building, Moped, scooter, motorcycle and tempos which were lying outside the building and this loss was estimated at Rs.10,74,000/-. Throughout the intervening night of 1st/ 2nd March 2002 the said mob laid seige to the building of Best Bakery and confined and detained the following persons who were inside the building: (1) Shri Nafitulla Habibulla Sheikh (2) Shri Nasibulla Habibulla Sheikh (3) Shaherunisha Habibulla Sheikh (4) Zahera Habibulla Sheikh (5) Shaahera Habibulla Sheikh (6) Sakhira Habibulla Sheikh (7) Yasminbanu Nafitullah Sheikh (8) Bai Zarinabibi (9) Kausharbai Shyammohammad Sheikh (10) Rahishkhan Aminmohammad Pathan (11) Tuffail Habibulla Sheikh (12) Shahejadjkhan Hasankhan Pathan (13) Shaloon Hasankhan Pathan (14) Prakash Ugru Dhobi (15) Baliram Shyamlal Verma (16) Raju a.k.a Rajesh Baijnath Badhhai (17) Nasirudin Mohammad Idrisakan (18) Feroz Akhtar Muhammad Ismailkhan (19) Rukshana Ferozkhan (20) Sulan Feroz Akhtarkhan, age 5 (21) Manisha Feroz Akhtarkhan, age 3 (22) Sipli Aslambhai Sheikh, age 4 (23) Babli Aslambhai Sheikh, age 4 (24) Shabnambibi Aslambhai Sheikh and (25) Lulo a.k.a. Ashrat Haronbhai Sheikh. A few of the occupants of the Best Bakery building who had climbed on to the terrace remained there throughout the night.

2.3.2002 In the morning of 2nd March 2002, some persons out of the mob persuaded Zahira Sheikh and others who were on the terrace of the building to come down assuring them that they would be taken to some safe place. However, when these occupants climbed down, the mob including the 21 accused robbed the gold chain of Zahira Sheikh and silver chain of Yashmin Banu and also killed (1) Feroz Akhtar Khan and (2) Nashroo Pathan who were trying to abscond at that time by injuring them with dangerous weapons and then setting fire in the near by field. Among the critically injured were (1) Nasibulla (2) Tufel (3) Raish and (4) Shajaad Khan. Among those killed were (1) Prakash Dhobi (2) Baliram Sharma (3) Raju Ramesh Badhari and among who were killed by setting fire were (1) Kausar bhai Sheikh (2) Lula /Asrat Sheikh (3) child Subhan (4) child Metar (5) child girl Ship and (6) child girl Babli. It now transpires from the police records that no police patrol team passed through the area where the Best Bakery was located throughout the night when the arson, looting and killing was taking place. This is of serious concern given the fact that the incident took place at a distance of 1–2 kms from the police station at Panigate.

Inspector Baria recorded the statement of Zahira Sheikh between 11.15 am and 3.00 pm on 2.3.2002 and sent it to the police station for a formal FIR. One Abhesinh, Head Constable recorded the statement of one Rahish Khan Amin Mohd. Pathan at SSG Hospital. It now transpires that despite the occurrence of such a grave incident in which 14 persons had died and several others injured, the copy of the FIR lodged by Zahira Sheikh did not reach the Magistrate concerned till at IFast 4 to 5 days later. This was a grave lapse on the part of the police. Further, despite the aforementioned persons naming several persons out of the mob involved in the crime, the police did not immediately arrest or interrogate those persons and waited for a whole month before doing so.

6.3.2002 By its proceedings dated 6th of March, 2002, while recording its disappointment that even a preliminary report had not been submitted by the Government of Gujarat in a matter of such urgency and significance, the NHRC sought a comprehensive response from the Government of Gujarat at the earliest. These proceedings were followed by a visit of a team of the NHRC including its Chairperson to Gujarat between 19–22 March 2002.

28.3.2002 After receipt of the report from the State of Gujarat on 28th of March, 2002 in response to the NHRC's notice on 1st March, 2002 and discussion held by the Chairperson and others with the officers of the State of Gujarat, the NHRC on 1st April 2002 made certain preliminary comments and recommendations on the situation in Gujarat. These included recommending investigation by the CBI of five critical cases concerning the incidents at Godhra, Chamanpura (Gulbarga Society), Naroda Patiya, Best Bakery and Sardarpura in Mehsana District. The appointment of special prosecutors and adoption of procedures to ensure protection of victims of the crime was also recommended.

31.5.2002 In its proceedings on 31.5.2002, the Commission noted, the basis of the reply sent to the State Government as well as the report of its special representative that the victims of the atrocities were experiencing to great difficulty in having their FIRs recorded. It once again recommended that the critical statements that entrusted to the CBI and reiterated the need for appointment of special court and prosecutors.

24.6.2002 On 24th June 2002, a chargesheet was filed by the State in the 'Best Bakery Case' against the 21 accused persons under ss.147, 148, 149, 188, 504, 342, 427, 436, 395, 307, 302 IPC and s.135 of the Bombay Police Act.

20.2.2003 The trial commenced on 20th February 2003. Although, many witnesses were cited in the calendar of witnesses, only 73 witnesses were examined and the remaining witnesses including 12 eyewitnesses, were given up. Out of the examined witnesses, 37 turned hostile which included the victim's close relatives. Subsequently, one of the principal eyewitnesses, Ms. Sheikh Zahira Habeebullah Khan, disclosed the reasons for turning hostile – viz., threat to her life if she deposed truthfully. There were also reports in the press and media of other witnesses who were similarly intimidated.

21.6.2003 Towards the end of the trial on a single day, i.e., 21st June 2003 not only was the I.O. further examined and cross-examined, but the learned trial Judge completed the examination and recording of statements of all the 21 accused persons under s.313 Cr.PC and further proceeded to hear arguments in part, all of this on the same day i.e., 21st June 2003.

27.6.2003 By the impugned judgment and order dated 27th June 2003 passed by the Additional Sessions Judge Fast Track Court No.1, Vadodara in Sessions Case No.248 of 2002, all the 21 accused persons were acquitted and directed to be released forthwith. The trial court held that "There is not even an iota of evidence produced on record of the case which can be legally accepted and which even remotely connects the accused with the charges leveled against them."

31.7.2003 Hence this special leave petition.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. __ OF 2003

IN THE MATTER OF:

National Human Rights Commission,
Sardar Patel Bhawan,
Sansad Marg, New Delhi
through its Registrar (Law).

PETITIONER

VERSUS

1. State of Gujarat
Through its Chief Secretary,
Sachivalaya Gandhi Nagar,
Gujarat.

2. Rajubhai Dhamirbhai Baria
r/o Hanuman Tekri, Dabhoi Road, Vadodara
Gujarat State
3. Nanu Langdo @ Mahendra Bishwas Rao Jadav
r/o Vadodara.
Gujarat State
4. Tino @ Harish Virendragir Gosai,
r/o Street opposite to Best Bakery, Hanuman Tekri,
Dabhoi Road, Vadodara.
Gujarat State
5. Pankaj Virendragir Gosai,
r/o Street opposite to Best Bakery,
Dabhoi Road, Vadodara,
Gujarat State
6. Painter @ Yogesh Lakshman Singh Verma,
r/o Sadar, Vadodara
Gujarat State
7. Jayantibhai Jamsingh Gohil,
r/o near Padam Talav, behind Sewage Pumping
Station, Gagrawadi, Vadodara
Gujarat State
8. Ramesh @ Rinku Jayantibhai Gohil,
r/o Sadar, Vadodara
Gujarat State
9. Mafat @ Mahesh Manilal Gohil,
r/o Sadar, Vadodara
Gujarat State
10. Munno @ Harshad Ravjibhai Solaniki
r/o Hanumantekri , Opp. Lal Mohd.'s House,
Vadodara.
Gujarat State
11. Pratapsingh Ravjibhai Chauhan
r/o Hanumantekri, behind Sindhi's Shop
Dabhoi Road, Vadodara
Gujarat State
12. Sanjay @ Bhopo Bobdo Rattilal Thakkar,
r/o Ansuya Nagar, Dabhoi Road, Vadodara.

Gujarat State

13. Bahadursingh @ Jeetu Chandrasingh Chauhan
r/o Hanumantekri, Vachlu Faliu, Dabhoi Road,
Vadodara.
Gujarat State
14. Yashinbhai Alibhai Khokhar,
r/o Hanumantekri, Dabhoi Road,
Vadodara.
Gujarat State
15. Jagdish Chunnilal Rajput,
r/o Adjoining Dalal Street, Opp. Tejab Mill,
Pratap Nagar, Vadodara.
Gujarat State
16. Dinesh Phoolchand Rajgar,
r/o Mamta Bekri, Ansuya Nagar, Dabhoi.
Gujarat State
17. Chhanabhai Chimanbhai Baria,
r/o Hanumantekri, Dabhoi Road,
Vadodara.
Gujarat State
18. Tulshibhai Bhikhabhai Tadvi,
r/o Sadar, Vadodara
Gujarat State.
19. Shailesh Anupbhai Tadvi,
r/o Sadar, Vadodara
Gujarat State.
20. Kamlesh Bhikhabhai Tadvi,
r/o Sadar, Vadodara
Gujarat State.
21. Suresh @ Lalo Devjibhai Vasava,
r/o Ansuya Nagar, near Hanumantekri,
Dabhoi Road, Vadodara.
Gujarat State.
22. Ravi Rajaram Chauhan (Marathi),
r/o Sadar, Vadodara,
Gujarat State.

CONTESTING RESPONDENTS

AND IN THE MATTER OF

**A PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
FOR GRANT OF SPECIAL LEAVE TO APPEAL TO THIS HON'BLE COURT
AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED 27.6.2003
OF THE ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO.1,
VADODARA PASSED IN SESSIONS CASE NO.248 OF 2002**

To

The Hon'ble the Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India

The humble petition of the

petitioner abovenamed –

MOST RESPECTFULLY SHOWETH:

1. This Special Leave Petition under Article 136 of the Constitution of India is being filed by the National Human Rights Commission along with an application for permission to file Special Leave Petition against the Judgment dated 27.6.2003 passed by the Addl. Sessions Judge, Fast Track Court No1, Vadodara in Sessions Case No.248 of 2002. By the said impugned Judgment and order the learned Addl. Sessions Judge has acquitted all the 21 accused (respondents 2 to 22) of the offences under ss.147, 148, 149, 188, 504, 342, 427, 436, 395, 307 and 302 IPC and directed their release.

2. QUESTIONS OF LAW:

The present Special Leave Petition raises the following substantial questions of law of general public importance for kind determination by this Hon'ble Court:

A. Is not the right to a fair trial, a constitutional imperative and an integral part of right to life guaranteed under Article 21 of the Constitution of India?

- B. Can it not be said that in the facts and circumstances of the Best Bakery case that there has been a gross violation of the right to fair trial of the victims and witnesses to the crime which requires to be redressed by this Hon'ble Court?
- C. Whether the Trial Court, in view of its finding that false evidence had been created, was not required to direct the prosecuting agency to gather further evidence and file a supplementary charge sheet under Section 173 (8) Cr. PC so that the real culprits did not go unpunished?
- D. In view of the subsequent statement made by one of the principal prosecution witnesses to the Petitioner herein, ought not the order of acquittal be set aside and the case asked to be further investigated by an independent investigating agency and re-trial ordered?
- E. Is it not inherent in the right to fair trial that victims of crime and the witnesses in a criminal case should receive adequate protection and be able to depose fairly and fearlessly during the trial before a criminal court?
- F. Is it not imperative for this Hon'ble Court to interfere in the matter notwithstanding that appeal has not yet been filed before the High Court as provided under Section 378 Cr. PC, given the fact that the entire investigation and trial stands vitiated and that the case calls for further investigation and re-trial?
- G. Ought not the court take notice of the fact that the atmosphere in the State of Gujarat is such that it cannot be expected that the trials arising out of the incidents of communal violence would take place in a free and fair manner and would it not be in the interests of justice for the trials in such cases to be held in courts outside the State of Gujarat?

3. FACTS OF THE CASE

The facts in brief of the case leading to the filing of the present Special Leave Petition are as follows:

1.1 On 27th February 2002, the Sabarmati Express train coming from Faizabad to Ahmedabad was attacked by a large crowd near the Godhra Railway Station and was set on fire. 58 persons were burnt alive and more than 40 passengers received injuries.

1.2 A call for a Gujarat Bandh was given for 28th February 2002. Meanwhile, incidents of communal violence were reported from several areas in the State of Gujarat on 27th/ 28th February 2002. By March 1st 2002 curfew was clamped in about 35 towns/ cities (night curfew in some of them) and in parts of Ahmedabad, Vadodara and Rajkot cities.

1.3 On 1st March 2002, the NHRC took suo motu action on the basis of media reports, both print and electronic. The media reports demonstrated a communal flare up in the State of Gujarat and suggested inaction by the police force and other functionaries in the State. The NHRC proceeded to step-in to prevent any negligence in the protection of human rights of the people in the State of Gujarat, irrespective of their religion. Notices were issued to the Chief Secretary and Director General of Police, Gujarat for their reply within three days indicating the measures being taken and in contemplation to prevent any other escalation of the situation in the State of Gujarat which is resulting in continued violation of the human rights of the people. A true copy of the order dated 1.3.2002 made by the petitioner is annexed herewith and marked as Annexure-P/1.

1.4 It transpires that at about 8.35 pm on 1st March 2002, an incident of rioting, arson and mischief by a mob took place in the vicinity of the Best Bakery i.e., in Gajra Vadi, Shiv Nagar, Ganesh Nagar and Hanuman Tekri. On receiving this message through the police control room, mobile van no.1 of police station Panigate, reached Best Bakery via Gajra Vadi, Shiv Nagar, Ganesh Nagar and found a 1000-1500 strong mob near Best Bakery. The police in the mobile van sought to disperse the crowd by announcing that the curfew was on. The police also appears to have noticed that the house of a Muslim had been set on fire in Shiv Nagar. However, it appears that no FIR was recorded about the said incident.

1.5 The police records reveal that although the mob outside Best Bakery was disbursed, no steps were taken by the police to protect the lives and property of the occupants of the Best Bakery and to prevent recurrence of any incident. Thus, on 1st March 2002 at around 10.30 pm, the mob reassembled at Best Bakery and set it on fire.

1.6 The aforementioned mob which included the 21 accused persons attacked the Best Bakery Building, threw stones and set it on fire. They also set fire to the timber godown of one Lal Mohammad Khudabaksh opposite to the Best Bakery. The estimated loss was Rs.1,30,000/-. The mob destroyed and set fire to the residential building of one Aslambhai Sheikh and also set fire to household things and the Heromajestic Moped. The loss was esatimated at Rs.1,55,000/-.

1.7 According to the police records, the said fanatical crowd along with the 21 accused persons continued attacking the Best Bakery Building and robbed it of maida, oil sugar worth Rs.75,000/-; also set fire to the building, Moped, scooter, motorcycle and tempos which were lying outside the building and this loss was estimated at Rs.10,74,000/-. Throughout the intervening night of 1st/ 2nd March 2002 the said mob laid seige to the building of Best Bakery and confined and detained the following persons who were inside the building: (1) Shri Nafitulla Habibulla Sheikh (2) Shri Nasibulla Habibulla Sheikh (3) Shaherunisha Habibulla Sheikh (4) Zahera Habibulla Sheikh (5) Shaahera Habibulla Sheikh (6) Sakhira Habibulla Sheikh (7) Yasminbanu Nafitullah Sheikh (8) Bai Zarinabibi (9) Kausharbhay Shyammohammad Sheikh (1) Rahishkhan Aminmohammad Pathan (11) Tuffail Habibulla Sheikh (12) Shahejadjkhan Hasankhan Pathan (13) Shaloon Hasankhan Pathan (14) Prakash Ugru Dhobi (15) Baliram Shyamlal Verma (16) Raju a.k.a Rajesh Baijnath Badhhai (17) Nasirudin Mohammad Idrisakan (18) Feroz Akhtar Muhammad Ismailkhan (19) Rukshana Ferozkhan (20) Sulan Feroz Akhtarkhan, age 5 (21) Manisha Feroz Akhtarkhan, age 3 (22) Sipli Aslambhai Sheikh, age 4 (23) Babli Aslambhai Sheikh, age 4 (24) Shabnambibi Aslambhai Sheikh and (25) Lulo a.k.a. Ashrat Haronbhai Sheikh. A few of the occupants of the Best Bakery building who had climbed on to the terrace remained there throughout the night.

1.8 In the morning of 2nd March 2002, some persons out of the mob persuaded Zahira Sheikh and others who were on the terrace of the building to come down assuring them that they would be taken to some safe place. However, when these occupants climbed down, the mob including the 21 accused robbed the gold chain of Zahira Sheikh and silver chain of Yashmin Banu and also killed (1) Feroz Akhtar Khan and (2) Nashroo Pathan who were trying to abscond at that time by injuring them with dangerous weapons and then setting fire in the near by field. Among the critically injured were (1) Nasibulla (2) Tufel (3) Raish and (4) Shajaad Khan. Among those killed were (1) Prakash Dhobi (2) Baliram Sharma (3) Raju Ramesh Badhari and among who were killed by setting fire were (1) Kausar bhai Sheikh (2) Lula /Asrat Sheikh (3) child Subhan (4) child Metar (5) child girl Ship and (6) child girl Babli.

1.9 It now transpires from the police records that no police patrol team passed through the area where the Best Bakery was located throughout the night when the arson, looting and killing was taking place. This is of serious concern given the fact that the incident took place at a distance of 1–2 kms from the police station at Panigate.

1.10 Inspector Baria recorded the statement of Zahira Sheikh between 11.15 am and 3.00 pm on 2.3.2002 and sent it to the police station for a formal FIR. One Abhesinh, Head Constable recorded the statement of one Rahish Khan Amin Mohd. Pathan at SSG Hospital. It now transpires that despite the occurrence of such a grave incident in which 14 persons had died and several others injured, the copy of the FIR lodged by Zahira Sheikh did not reach the Magistrate concerned till at lFast 4 to 5 days later. This was a grave lapse on the part of the police.

1.11 Further, despite the aforementioned persons naming several persons out of the mob involved in the crime, the police did not immediately arrest or interrogate those persons and waited for a whole month before doing so.

1.12 Meanwhile, no response was received from the Government of Gujarat to the order dated 1st March 2002 passed by the NHRC. However, by letter dated 4th March 2002, a request was made by the Chief Secretary for 15 days time stating that “as most of the State machinery is busy with the law and order situation, it would take some time to collect the information and compile the report”.

1.13 By its proceedings dated 6th of March, 2002, while recording its disappointment that even a preliminary report had not been submitted by the Government of Gujarat in a matter of such urgency and significance, the NHRC sought a comprehensive response from the Government of Gujarat at the earliest. These proceedings were followed by a visit of a team of the NHRC including its Chairperson to Gujarat between 19 – 22 March 2002. During the course of that mission, the team visited Ahmedabad, Vadodara and Godhra and held intensive discussions with the Chief Minister, Chief Secretary, senior Officers of the State, eminent citizens including retired Chief Justices and Judges of the High Courts and former bureaucrats besides representatives of NGOs and other private citizens.

1.14 The NHRC noticed that the events had resulted in gross violation of fundamental right to life, liberty, equality and dignity of citizens of India as guaranteed by the Constitution. After receipt of the report from the State of Gujarat on 28th of March, 2002 in response to the NHRC’s notice on 1st March, 2002 and discussion held by the Chairperson and others with the officers of the State of Gujarat, the NHRC on 1st April 2002 made certain preliminary comments and recommendations on the situation in Gujarat. A true copy of the NHRC’s proceedings dated 1.4.2002 is annexed and marked as Annexure-P/2. The NHRC took note of the report of the State Government and made certain recommendations for immediate consideration of the Central and State Government, some of which are extracted hereinbelow:

“Law & Order

- (ii) In view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being ‘influenced’ by extraneous considerations or players, the

Commission is of the view that the integrity of the process has to be restored. It therefore recommends the entrusting of certain critical cases to the CBI. These includes the cases relating to the

- Godhra incident, which is at present being investigated by the GRP;
- . Chamanpura (Gulbarga Society) incident;
- . Naroda Patiya incident;
- . Best Bakery case in Vadodara; and the
- . Sadarpura case in Mehsana district.

(iii) The Commission recommends that Special Courts should try these cases on a day-to-day basis, the Judges being handpicked by the Chief Justice of the High Court of Gujarat. Special Prosecutors should be appointed as needed. Procedures should be adopted for the conduct of the proceedings in such a manner that the traumatized condition of many of the victims, particularly women and children, is not aggravated and they are protected from further trauma or threat. A particular effort should be made to depute sensitive officers, particularly officers who are women, to assist in the handling of such cases.

(iv) Special Cells should be constituted under the concerned District Magistrates to follow the progress of the investigation of cases not entrusted to the CBI; these should be monitored by the Additional Director-General (Crime).

(v) Specific time-frames should be fixed for the thorough and expeditious completion of investigations

(vi) Police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.

(vii) Material collected by NGOs such as Citizen's Initiative, PUCL and others should also be used."

(viii)

3.15 The Government of Gujarat sent a reply on 13th April 2002 but without any response to the contents of the Confidential Report of the NHRC team which was referred to, in the proceedings of 1st April 2002. In its proceedings dated 31.5.2002, the NHRC observed in paras 19 and 20 as under:

Para 19

"The Commission had reported in its Proceedings of 1 April 2002 that there were numerous allegations made both in the media and to its team that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to influence the working of police stations

by their presence within them. The Commission has thus been constrained to observe that there was a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission had also observed that according to the State Government itself, “in Ahmedabad, looting was reported in well-to-do localities by relatively rich people.” Yet the State Government had not identified who these persons were.

Para 20

The report of the State Government of 12 April, 2002 once again fails to make the necessary identification of these persons. It also fails to rebut the repeatedly made allegation that senior political personalities – who have been named – were seeking to influence the working of police stations by their presence within them. It states that the Government “fully accepts the view that there should be transparency and integrity in investigating instances of death and destruction” and adds that “this is being taken care of”. The Commission’s Special Representative, Shri Nampoothiri, however, has reported to the Commission on 24 April 2002 in a totally opposite vein. He has stated that, in respect of most of the “sensational cases,” the FIRs registered on behalf of the State by the police officer concerned, the accused persons are shown as “unknown”. His report adds that “this is the general pattern seen all over the State. Even when complaints of the aggrieved parties have been recorded, it has been alleged that the names of the offenders are not included. In almost all the cases, copies of the FIRs which the complainant is entitled to, has not been given.” There has been widespread public outrage, in particular, in respect of atrocities against women, including acts of rape, in respect of which FIRs were neither promptly nor accurately recorded, and the victims harassed and intimidated. The Commission must conclude, therefore, that until the time

of Shri Nampoothiri's 24 April, 2002 report, the victims of the atrocities were experiencing great difficulty in having FIRs recorded, in naming those whom they had identified and in securing copies of their FIRs. Further – for far too long – politically – connected persons, named by the victims of the crimes committed, remained at large, many defying arrest. These are grave matters indeed that must not be allowed to be forgiven or forgotten. Based on Shri Nampoothiri's reports the Commission would therefore like to warn that the danger persists of a large-scale and unconscionable miscarriage of justice if the effort to investigate and prosecute the crimes that have been committed is not directed with greater skill and determination, and marked by a higher sense of integrity and freedom from 'extraneous political and other influences' than has hitherto been in evidence. Of particular concern to the Commission have been the heart-rending instances identified in its Proceedings of 1 April, 2002, in respect of which it had called for investigations by the CBO: those cases relate to some of the very worst incidents of murder, arson, rape and other atrocities, including many committed against women and children whose tragic and inconsolable circumstances have profoundly shocked and pained the nation."

The NHRC made certain other recommendations as under:

"Having reviewed the responses received thus far, the Commission would now like to make a further set of Recommendations, keeping in mind those that it had made in its proceedings of 1 April, 2002.

Involvement of CBI

27 (I) In view of the widespread allegations that FIRs has been poorly or wrongly recorded and that investigations had been 'influenced' by extraneous considerations or players, the Commission had stated that the integrity of the process had to be restored. It had therefore recommended that certain critical cases, including five that it had specifically mentioned, be entrusted to the CBI.

3.16 The State Government responded on 12 April, 2002 saying that "An investigation conducted by the State Police cannot be discredited, cannot be put into disrepute and its fairness questioned merely on the basis of hostile propaganda." It then recounted the steps taken in respect of the five cases listed by the Commission

and added that transference of these cases to the CBI would “indefinitely delay the investigation” and help the accused persons to get bail. It also stated that the CBI is already understaffed and over-burdened. The Commission was therefore requested to reconsider its recommendation as it was based on “unsubstantiated information given to the Commission by sources with whom authentic information was not available.”

The response of the Ministry of Home Affairs, Government of India, dated 1 May 2002, summarizes the position of the State Government. It then adds that, under existing rules, the CBI can take up the investigation only if the State Government addresses and appropriately requests the CBI to do so. Since the State Government had expressed the opinion that investigation into the cases is not required by the CBI at this stage, “it is not possible for the Central Government to direct the CBI to take up the investigation of the above cases.”

The Commission has considered these responses with utmost care. It does not share the view of the State Government that the substance of the allegations made against the conduct of the police, and the reports of “extraneous” influences brought to bear on the police, were based on “hostile propaganda” or “unsubstantiated information”. The allegations were made by those who were personally affected by, or witness to, the events, and by eminent personalities and activists who spoke to the Commission directly, or addressed petitions to it, with a full sense of responsibility. The Commission would like to underline that it is a central principle in the administration of criminal justice that those against whom allegations are made should not themselves be entrusted with the investigation of those allegations. It has universally been the practice to act on this principle, including in this country. To depart from that principle would, therefore, be to invite a failure of justice. In respect of the cases listed by the Commission, the allegations of inaction, or complicity by the elements of the State apparatus were grave and severely damaging to its credibility and integrity. It would thus be a travesty of the principles of criminal justice if such cases were not transferred to the CBI. Worse still, the inability to do so could severely compromise the fundamental rights to life, liberty, equality and dignity guaranteed by the Constitution to all the people of India on a non-discriminatory basis. Further, in the light of the unanimously adopted resolution in the Rajya Sabha on 6 May, 2002, urging the Central Government “to intervene effectively under Article 355 of the Constitution to protect the lives and properties of citizens,” the Commission is emphatically of the view that the role of the Central Government in respect of the investigation of the cases identified by the Commission should go beyond a mere invocation of the “existing rules” in respect of when the CBI can take up a case for investigation and a statement to the effect that “it is not possible for it to direct the CBI to take up the investigation of these cases given the position taken by the State Government.

3.17 In these circumstances, the Commission urges once again that the critical cases be entrusted to the CBI and that the Central Government ensure that this is done, not last in view of the Rajya Sabha resolution referring to its responsibilities under Article 355 of the Constitution. The Commission is deeply concerned, in this connexion, to see from Shri Nampoothiri’s report of 28 May 2002 that, of 16,245 persons arrested for substantive offences, all but some 2100 had been bailed out as of 10 May, 2002. It also noted from that report that of the 11,363 Hindus arrested for such offences, 8% remained in custody, while 20% of the 4,882 Muslims thus arrested remained in such custody. This does not provide a particularly reassuring commentary on the determination of the State Authorities to keep in check those who were arrested or to bring them to justice.

23.

24. Special Courts and Special Prosecutors

(i) The Commission had recommended on 1 April 2002 that Special Courts be established to try the most critical cases on a day-to-day basis, the Judges being hand picked by the Chief Justice of the High Court of Gujarat, with Special Prosecutors being appointed as needed. Emphasis was also placed on the need for procedures to be adopted of a kind that protected the victimized women and children from further trauma and threat. The deputation of sensitive officers, particularly those who were women, was recommended to assist in the handling of such cases.

(ii) The response of the State Government does not indicate whether it accepts the recommendation for Special Courts of the kind proposed by the Commission, the purpose of which was to ensure expeditious trial and disposal of cases. The Commission would like to stress that justice appropriately and speedily delivered after an outburst of communal violence is essential to the return of the normalcy, and that delays in the process exacerbate the climate of violence and mistrust. The response of the State Government also does not comment on the recommendation regarding the appointment of Special Prosecutors. This is regrettable since media and other reports have alleged that the existing Public Prosecutors have, in critical cases, not asked the Courts to send the accused to police remand, but have informed the Courts that there was no objection to the granting of bail. The Government is therefore requested to clarify the facts pertaining to these matters.

25.
.....”

26. The NHRC in its concluding observations said:

“The tragic events in Gujarat, starting with the Godhra incident and continuing with the violence that rocked the State for over two months, have greatly saddened the nation. There is no doubt, in the opinion of this Commission, that there was a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. It is, of course, essential to heal the wounds and to look to a future of peace and harmony. But the pursuit of these high objectives must be based on justice and the upholding of the values of the Constitution of the Republic and the laws of the land. That is why it remains of fundamental importance that the measures that require to be taken to bring the violators of human rights to book are indeed taken.”

18.18 In spite of strong recommendations supported by very valid reasons of the NHRC, the State Government did not entrust investigation of even the five test cases mentioned by the NHRC to the CBI. Even subsequently, the State Government stuck to the same view as conveyed by the Chief Secretary to the Government of Gujarat to the NHRC.

18.19 It now transpires that Lal Mohammad, who had earlier made a statement to the police on 9th March 2002 implicating the accused, gave a supplementary statement on 16th June 2002 wherein he mentioned that when his premises were attacked by the mob, he and his family members and others were taken out by one of the accused and thereafter sheltered and protected by some of the accused persons. This dramatic volte-face by Lal Mohammad ought to have put the investigating agency on caution that external pressure was being already brought upon the witnesses to the crime.

18.20 On 24th June 2002, a chargesheet was filed by the State in the ‘Best Bakery Case’ against the 21 accused persons under ss.147, 148, 149, 188, 504, 342, 427, 436, 395, 307, 302 IPC and s.135 of the Bombay

Police Act.

18.21 The trial commenced on 20th February 2003. Although, many witnesses were cited in the calendar of witnesses, only 73 witnesses were examined and the remaining witnesses including 12 eyewitnesses, were given up. Out of the examined witnesses, 37 turned hostile which included the victim's close relatives. Subsequently, one of the principal eyewitnesses, Ms. Sheikh Zahira Habeebullah Khan, disclosed the reasons for turning hostile – viz., threat to her life if she deposed truthfully. There were also reports in the press and media of other witnesses who were similarly intimidated.

18.22 It now transpires that even as one witness after the other, including the principal eyewitnesses, turned hostile, the learned Trial Judge made no effort to ascertain why this was happening. Further, the record reveals that the cross-examination of the hostile witnesses by the public prosecutor was most perfunctory. For instance, Sheikh Zahira Habeebullah Khan, was not confronted with her signatures on the initial complaint dated 2nd March 2002 wherein she had named 10 of the accused persons and was not asked to explain under what circumstances she had made that statement. Further, although it was plain that Lal Mohammad, by making the supplementary statement dated 16th June 2002, was not going to support of the prosecution, he was examined as a prosecution witness instead of being dropped from the list. Thus, instead of making efforts to strengthen the prosecution case, it appears that the steps to the contrary were being taken.

18.23 Towards the end of the trial, when it appeared that most of the prosecution witnesses had resiled from their earlier statements, it was apparent that either the investigation into the case had been wholly unsatisfactory or that all of these witnesses had been won over by the accused. This would therefore have required a very detailed examination and cross examination of the investigating officer who took the witness stand on 21st June 2003. However, the record now reveals that on a single day, i.e., 21st June 2003 not only was the I.O. further examined and cross-examined, but the learned trial Judge completed the examination and recording of statements of all the 21 accused persons under s.313 Cr.PC and further proceeded to hear arguments in part, all of this on the same day i.e., 21st June 2003. It is submitted that this itself is a clear indication that the trial in the Best Bakery Case had already been reduced to a farce.

18.24 By the impugned judgment and order dated 27th June 2003 passed by the Additional Sessions Judge Fast Track Court No.1, Vadodara in Sessions Case No.248 of 2002, all the 21 accused persons were acquitted and directed to be released forthwith.

18.25 The petitioner, with respect to the learned Judge, submits that in a large part of his judgment he has embarked on irrelevant historical matters and theories which appear to have made him feel helpless in the case but accept the inevitable consequence of there being no evidence to convict the accused. In para 52 of the judgment he concludes: "There is not even an iota of evidence produced on record of the case which can be legally accepted and which even remotely connects the accused with the charges leveled against them."

18.26 The Petitioner by an order dated July 6, 2003 requested the Trial Court to furnish the team deputed by it with a full copy of the record of the Best Bakery Case.

18.27 The Team deputed by the Petitioner visited Vadodara July 8, 2003 and brought back with them copy of the relevant materials pertaining to the Best Bakery case. A report was also submitted by the team to the petitioner on 28th July, 2003.

18.28 On 11.7.2003, the Petitioner was approached by Ms. Shaikh Zahira Bibi Habeebullah who was one of the principal prosecution witnesses in the case and who had witnessed some members of her family being burnt alive in front of her eyes by the accused persons in the Best Bakery Case. Ms. Shaikh Zahira Bibi made a statement before the Petitioner explaining the circumstances under which she was made to resile from the statement earlier made to the police. She named the persons who had threatened her as well as her mother.

18.29 That after carefully considering the report of the NHRC team, all other relevant material pertaining to the Best Bakery Case, including the subsequent statement of Ms. Sheikh Zahira Bibi to the NHRC, the Petitioner decided to approach this Hon'ble Court for a direction that the order of acquittal in the Best Bakery Case be set aside and that the case be directed to be further investigated by an independent agency and the accused re-tried in a court which is in an atmosphere and surroundings which allows a fair trial free from in-

timidation of witnesses.

18.30 The Petitioner is approaching this Hon'ble Court in the exercise of its special and extraordinary jurisdiction under Article 136 and Article 142 as there has been a failure of justice reflecting on the judicial system which requires appropriate directions from this Hon'ble Court. The directions which are sought for from this Hon'ble Court are, inter alia, for setting aside of the impugned judgement of acquittal passed by the trial court, a further investigation by an independent agency not connected with the State and a retrial in a court outside the State of Gujarat in an atmosphere free from local tensions and intimidation. The petitioner submits that the High Court even if approached or being seized of the case will not be able to give this relief. The petitioners are also filing a petition for transfer of four other critical cases to this Hon'ble Court for the same consideration.

4. That the Petitioner has not filed any other Special Leave Petition in this Hon'ble Court or appeal in any High Court against the Final judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002 and being aggrieved by the same begs to prefer the present special leave petition on inter alia the following grounds which are taken without prejudice to one another:

G R O U N D S

A. The Petitioner submits that the concept of fair trial is constitutional imperative and is explicitly recognized as such in the specific provisions of the Constitution including Articles 14, 19, 21, 22 and 39A of the Constitution as well as the various provisions of the Code of Criminal Procedure 1973 (Cr. PC).

B. It is submitted that the right to fair trial is also explicitly recognised as a human right in terms of Article 14 of the International Covenant on Civil and Political right (ICCPR) which has been ratified by India and which now forms part of the statutory legal regime explicitly recognised as such under Section 2(1)(d) of the Protection of Human Rights Act, 1993. It is submitted that violation of a right to fair trial is not only a violation of the fundamental right under our Constitution but also violative of the internationally recognized human rights as spelt out in the ICCPR to which India is a party. It is submitted that the failure to afford a fair trial questions the very legitimacy of a legal system and poses a serious problem for the enforcement of the rule of law. It is submitted that it is the constitutional duty and function of the various organs of State including the legislature, executive and judiciary to ensure that rule of law is protected and enforced. A violation of right to fair trial calls for accountability and answerability of the State and requires each of its organs to take remedial and corrective steps in order to ensure that the violation is redressed and the rights of those involved are protected.

C. It is submitted that the criminal justice system in our country, based as it is upon recognition of certain essential basic norms of criminal jurisprudence and constitutional protection, is aimed at providing a fair treatment not only to the accused facing criminal charges and trial but also to the victims of crime and witnesses involved in the trial. A denial of right to fair trial or access to justice to any of these categories of persons would delegitimise the criminal justice system. A trial that stands vitiated on account of witnesses and victims of the crime having to depose in a Court of law under fear of their own safety would make a mockery of criminal justice system and vitiate the entire trial.

D. The Petitioner submits that it is the statutory duty of the Petitioner under the PHRA to strive for "the better protection of human rights" and also under Section 12(b) of the PHRA "to intervene in any proceedings involving any allegation of violation of human rights pending before the Court with the approval of such Court". It becomes duty of the Petitioner, in the facts and circumstances of the present case, not to be a mere by-stander to the blatant violation of human rights of the victims of the communal violence in the State of Gujarat but to actively intervene to ensure that their rights are enforced and protected.

E. The Petitioner submits that the impugned judgment is testimony to the failure of the criminal justice system on many counts. In the words of the Presiding Judge who has authored the judgment, "there appears to be clear circumstances to believe that the police officers have abruptly and arbitrarily recorded the so called statement of the witnesses subsequently and have falsely incorporated the names of the accused persons" (Para 42).

Further the learned Trial Judge has concluded, after scanning the evidence in some detail that “there is no cogent, reliable and proof on record before this Court so as to establish the guilt against the accused who are produced before this Court. Looking to the circumstances of the case it clearly transpires from the judicial scrutiny of the evidence produced on record of the case that totally false evidence stands created against the wrong accused” (Para 45).

The Trial Court has stated in anguish: “14 persons have died in the Best Bakery Case and property worth lakhs of rupees have been destroyed, looted and set ablaze. It is very difficulty for common man to understanding that in the judicial proceedings involving crime of such a large magnitude nobody has been convicted and punished. A storm of suspicion is generated in the mind”. (para 46)

F. It is submitted that given the magnitude of the crime in the instant case, it is not merely a suspicion that arises but a whole scale failure of the criminal justice system which has enabled the accused to go scot free.

G. It is further submitted that the record of the Court itself demonstrates that the evidence which should have been protected and preserved for presentation before the Court by the prosecution was not so preserved leading to acquittal of the accused. There has been an abject failure not only on the part of the investigating agency but also on the part of the prosecution to assist the court in arriving at the truth and ensure that justice was done.

H) It is submitted that there is nothing in either the Code of Criminal Procedure or the Constitution of India that renders the judicial system helpless in a situation where there is a blatant violation of a right to fair trial. There are adequate provisions in the Cr. PC to enable a judge conducting a criminal trial to ensure that the right to fair trial is not rendered nugatory particularly where one witness after the other resiles from statements made earlier during investigation giving rise to a more than reasonable suspicion that they have been coerced into doing so. It is submitted that the approach of the learned Trial Judge in the instant case was erroneous. The Trial Judge was under the impression that “This Court has no powers and jurisdiction to find and establish that if the accused is not guilty then who is the real offender or that to award compensation from the Government to the sufferer. The Court of justice is not a court of justice in the real sense but it is a court of evidence”. (Para 48) Further, the learned Judge observes: “Just as bogus accused are roped in the offence, bogus witnesses are also roped and involved and similarly bogus panchas are created. Since the accused are bogus, the depositions made by the true and real witnesses also turn out to be meaningless against the bogus accused.” (para 50)

I) That the failure of the trial court, after making the observations referred to above, to order further investigations before concluding the trial has put the credibility of the justice delivery system under a serious challenge. In this context, the petitioner submits that a criminal trial is not a mere formality. When an offence is committed and the Court is seized of the case either through complaint or police report, it becomes the duty of the Court to ascertain the truth and render justice. Failure to do so results in miscarriage of justice.

J) Whenever a criminal goes unpunished, it is the society at large which suffers because the victims become demoralized and criminals encouraged. It therefore, becomes duty of the Court to use all its powers to unearth the truth and render justice so that the crime is punished.

K) It is submitted that the perception by the learned Judge of his role is completely misplaced and has prevented the judge from ensuring that the trial is conducted in a free and fair manner. There are provisions in the Cr.PC which can be invoked in order to enable witnesses to depose before the Court fairly and fearlessly. For instance it is possible for the Court, for special reasons, to hold the trial in camera. S. 9 (6) states that “The Court of Sessions shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Sessions is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the Sessions Division, it may,

with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein". Where one witness after the other is seen by the Court to be resiling from the earlier statement made, it was incumbent upon the prosecution to apply to the Court to have the trial conducted in camera. Even if the prosecution did not do so the Court was not powerless to itself to suggest that the trial should be held in camera. The record of the case shows that no such move was made at any point of time by either the prosecution or by the Court itself.

L) Under s.309 Cr.PC, the trial court can, for reasons to be recorded and writing postpone the trial. Thus, the court can ensure that a safe atmosphere is created to enable witnesses to depose fearlessly. It is also possible under s.311 to recall and re-examine any person already examined particularly "if his evidence appears to it to be essential to the just decision of the case". This apart under s.319, where it appears to the Court that there are other persons who in fact appear to be guilty of the offence but are not either arrested or arrayed as accused, the Court could proceed on its own. The above provisions are illustrative of the fairly wide powers that a criminal court has under the Criminal Procedure Code. In view of the above it was erroneous for the Court to conclude that it is only the Court of evidence and not the Court of justice.

M) It is submitted that even at the stage of investigation it was possible for the Court in the facts and circumstances of a given case, to require the prosecution to further investigate the case and file, under s.173 (8) a further report of such investigation. In the instant case if the Court felt that either the investigation was flawed or that further investigation was required it could have ordered the same in order to arrive at the truth and uphold the cause of justice. Its failure to do so in the instant case has vitiated the whole trial.

N) The Petitioner submits that it is imperative for this Hon'ble Court to intervene in the matter particularly since there is serious infraction of the fundamental right of the victims of the crime and the witnesses to a fair trial. Redressal of such violation of fundamental rights could be provided by this Hon'ble Court in the exercise of its constitutional jurisdiction. Further, in the exercise of its criminal appellate jurisdiction, it is possible for this Court to exercise all the powers of appellate court under s.386 Cr.PC together with other enabling powers available to it under Article 136 of the Constitution of India read with Article 142 thereof.

O) It is now settled position in law that the words "the procedure established by law" under Article 21 are weighty words and must be so interpreted to exclude anything that is arbitrary, fanciful or oppressive. It was held in *Maneka Gandhi v Union of India* 1978 (1) SCC 248 that "Procedure established by law with its lethal potentiality will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head.... Processual justice is writ patently on Article 21" (Para 81 to 82).

P) In the same case, in the separate opinion of Hon'ble Mr. Justice Krishna Iyer J., it was expounded thus "Procedural safeguards are the indispensable essence of liberty. In fact, history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics... To sum up, the "procedure" in Article 21 means fair, not formal procedure. Law is reasonable law, not any enacted piece".

Q) It is submitted that the above tenet was further reiterated in a series of decisions of this Hon'ble Court including *Hussainara Khatoun v. Home Secretary*, 1980 (1) SCC 81, and *Francis Coralie Mullin Vs. Administrator U.T. of Delhi* 1981 (1) SCC 608 where it was emphasized that "it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, further more, deprivation is not an act which is complete once for all: It is a continuing act and so long as it lasts, it must be in accordance with procedure established by law".

In the same case it was further explained that the concept of life was all encompassing and would include "basic necessities of life and also the right to carry on such functions of activities as constitute the bare minimum expression of the human self".

R) It is submitted that the above provisions of the Constitution as explained in the decisions of this Hon'ble Court are sufficient by themselves for this Hon'ble Court to declare that the right of witnesses and

victims of crime to a fair trial forms an integral part of right to life under Article 21 of the Constitution. This is implicitly recognised in certain other provisions like s.25 of the Evidence Act, 1872 and s.162 of the Cr. PC. It is respectfully suggested that the individual components of this right would include:

- a) Right to make statements during investigation free of coercion and threat.
- b) To be able freely and fearlessly attend the Court without any threat of personal safety of the life or family or close relative. This is explained in s.161 Cr. PC which provides that the complainant and witnesses are not required to accompany the police officer on the date of the hearing and are not to be subjected to unnecessary restraint or inconvenience.
- (c) The right to be asked to be examined on commission or to be examined in camera where the witness apprehends threat to personal safety. This is relatable to s.284 and 287 of the Cr. PC.
- (d) The right to receive legal aid at State expenses for participating in the trial and attending the Court either as victim of crime or as witnesses (this is relatable to Article 21 read with Article 39-A of the Constitution).
- (e) The right to challenge an erroneous conduct of the trial and the consequent erroneous verdict before an appellate forum.
- (f) The right to be compensated for injuries and losses suffered on account of the participation in the investigation and in the trial.

S) It has now become clear that the principal witnesses were subject to threats that prevented them from deposing truly before the Court. This is also clear from the fact that Public Prosecutor, even after finding the witnesses had turned hostile chose not to cross-examine such witnesses effectively and allowed the entire trial to be vitiated.

T) The petitioner submits that, notwithstanding the merits of the instant case, it is imperative in the interests of justice for this Hon'ble Court, in exercise of its powers under Article 142 of the Constitution, to lay down guidelines and directions in relation to protection of witnesses and victims of crime in criminal trials which can be adhered to both by the prosecuting and law enforcement agencies as well as the subordinate judiciary. This has become all the more necessary in view of the fair regularity with which criminal trials in important cases concerning crimes of a grave nature are being reduced to a farce on account of principal prosecution witnesses being won over by the accused persons either before the commencement of or during the course of the trial. It is submitted the various provisions of the Cr.PC as well as the Constitution facilitate the evolving of a witness and victim protection programme which is already in vogue in countries like the U.S.A. More recently, the Statute for the creation of an International Criminal Court (ICC), which was signed by 120 countries in June 1998 and has subsequently been ratified by over 70 countries and come into force, contains a specific provision (Article 68) for 'Protection of the victims and witnesses and their participation in the proceedings'. Further Article 43 (6) of the said Statute requires the Registrar of the ICC to set up a 'Victims and Witnesses Unit' within the Registry which shall provide "protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence."

U) The Petitioner submits that it was also a failure on the part of the learned Judge, not to adjourn the case or conduct the trial in camera despite finding that one prosecution witness after another was resiling from the statement earlier made. This, it is submitted, lead to the inevitable miscarriage of justice.

V) The Petitioner submits that this is a fit case where this Hon'ble Court ought to set aside the order of acquittal and direct further investigation into the case and a retrial. In doing so this Hon'ble Court would be exercising the powers of the appellate Court which are available to it under s.386 Cr.PC.

W) It is submitted that given the track record of the investigation already conducted it is imperative that this Hon'ble Court direct the further investigation by an independent agency and ensure that the same is completed with expedition so that valuable evidence is not lost and the truth is arrived at.

X) That a fair trial is a constitutional imperative. The fairness of trial implies not only fairness of the accused, but also fairness for the witnesses and the victims. Where the fairness of the trial becomes questionable, is it not open to the Court to set aside the entire proceedings and denovo investigation and trial.

Y) It is submitted that where a trial court comes to a conclusion that “totally false evidence has been created against wrong accused”, it was incumbent upon it to proceed against the investigating agency and its failure to do so would result in encouraging fabrication of false evidence which strikes at the very root of criminal delivery justice system.

Z) It is submitted that a mechanical adherence to the principle that “hundreds of criminals may escape, but one single innocent must not be punished” may result in adopting the easy course of acquitting accused. While there is no quarrel with the proposition that not one single innocent must be punished, it is submitted that courts are expected to be sensitive and cautious to ensure that no criminal should also escape. The viability of criminal justice system is tested in such cases.

AA) That a trial conducted in an atmosphere where witnesses due to fear fail to depose because of the surcharged atmosphere in the area cannot be said to be a valid trial and such a trial needs to be set aside with direction to conduct proper trial a fresh.

BB) The Petitioner has, simultaneously with this petition, filed a Transfer Petition in this Hon’ble Court seeking the transfer of certain critical cases concerning the incidents of communal violence in Gujarat which took place between February and May, 2002 to some other courts outside the state.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to:

(a) grant Special Leave to Appeal against the impugned Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002; and

(b) pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

Settled by:

Drawn And Filed By

Mr.T.R.Andhyarujina

(S. Muralidhar)

Senior Advocate

Advocate for the Petitioner

Mr. P.P. Rao

Senior Advocate

New Delhi

DRAWN ON: 29.7.2003

Filed on: 31.7.2003

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF:

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. Additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition for which a separate application has been filed. It is further certified that the copies of the documents/ annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the petitioner/ person authorized by the petitioner whose Affidavit is filed in support of the S.L.P.

(S. Muralidhar)

ADVOCATE FOR THE PETITIONER

NEW DELHI.

DRAWN ON: 29.7.2003

FILED ON: 31.7.2003

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF:

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

AFFIDAVIT

I, Ajit Bharioke, S/o Late Shri Inderjit Bharioke, aged about 53 years, Registrar (Law), National Human Rights Commission, Sardar Patel Bhavan, Sansad Marg, New Delhi, do hereby solemnly affirm and state as follows:

1. I am the Registrar of the Petitioner in the above matter and as such acquainted with the facts of the case.
2. That I have read and understood the contents of Synopsis and List of Dates at Pages B to _____ and contents of Special Leave Petition as contained at pages ___ to ___ and state that the facts stated therein are true and correct to my knowledge and those of submissions of law made in questions of law, grounds, prayer and certificate are true and correct as per the legal advice received and believed by me.
3. That the contents of Application for exemption from filing certified copy of Impugned Judgment, Application for ad-interim exparte stay and application for permission to file SLP, Application for permission to urge additional facts and Application for exemption from filing official translation to file the Special Leave Petition at pages ___ to ___ are also true and correct.
4. That the annexures P/1 and P/2 being enclosed with the Special Leave Petition, are true copies of their respective originals.
5. I say that the contents of my above affidavit are true and correct, no part of it is false nor anything material has been concealed therefrom.

Verified at New Delhi on this ___th day of July, 2003.

DEPONENT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRL.M.P. NO. _____ OF 2003
IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF:

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

AND IN THE MATTER OF

AN APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF IMPUGNED ORDER
DATED 27.6.2003.

To

The Hon'ble the Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India

The humble petition of the
petitioner abovenamed –

MOST RESPECTFULLY SHOWETH

1. The petitioner has this day filed the above special leave petition in this Hon'ble Court against the impugned Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002.
2. That for the sake of brevity the Petitioner is not narrating the full facts of the case herein in this application and craves leave of this Hon'ble Court to refer to and rely on the facts stated in the S.L.P. as forming part and parcel of this application for exemption from filing certified copy of the impugned order also.
3. The Petitioner submits that since the Petitioner is in receipt of true copy of the impugned Judgment from the Court of the learned Addl. Sessions Judge, Vadodara and as such files the present Special Leave Petition on the strength of the said true copy of the Impugned Judgment dated 27.6.2003 to avoid any delay in the filing of the case. The petitioner not being a party to the criminal trial, cannot obtain the certified copy itself and the same may be called for by this Hon'ble Court. In the circumstances, the petitioner is requesting that the petitioner may be exempted from filing the certified copy of the impugned judgment.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a/ exempt the petitioner from filing certified copy of Impugned Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002;
- and
- b/ pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

DRAWN AND FILED BY

(S. Muralidhar)

ADVOCATE FOR THE PETITIONER

NEW DELHI

DRAWN ON: 29.7.2003

FILED ON: 31.7.2003

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P. NO. _____ OF 2003

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF:

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

AND IN THE MATTER OF

AN APPLICATION FOR AD-INTERIM EXPARTE DIRECTIONS

To

The Hon'ble the Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India

The humble petition of the

petitioner abovenamed –

MOST RESPECTFULLY SHOWETH

1. The petitioner has this day filed the above special leave petition in this Hon'ble Court against the impugned Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002.

2. That for the sake of brevity the Petitioner is not narrating the full facts of the case herein in this application and crave leave of this Hon'ble Court to refer to and rely on the facts stated in the S.L.P. as forming part and parcel of this application for directions also.

3. The petitioner is approaching this Hon'ble Court seeking the setting aside of the impugned judgment of the trial court in the Best Bakery Case and seeking directions for further investigation by an independent agency and retrial of the case in a competent court located outside the State of Gujarat.

4. The petitioner is approaching this Hon'ble Court since the directions sought for from this Hon'ble Court for a retrial of the case outside the State cannot be given by the High Court and can only be given by this Hon'ble Court. The petitioner is also seeking, by a separate petition, the transfer of certain critical pending cases in the State of Gujarat arising out of the incidents of communal violence that took place between February and May 2002 to courts outside of the State of Gujarat.

5. The petitioner submits that as a result of the impugned judgment and order, all the 21 accused have been set at liberty and there is every likelihood of threat and danger to their lives of the witnesses in the trial as well as the destruction of any further evidence that could be gathered by further investigation. It is submitted that it would be in the interests of justice for this Hon'ble Court to direct that non-bailable warrants to each of the accused i.e., respondents 2 to 22 to ensure their continued presence for further investigation and consequential retrial if any. Other severe prejudice would be caused and the cause of justice may be defeated.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a/ direct that non-bailable warrants be issued to ensure the continued presence of respondents 2 to 22;
- b/ pass ad interim exparte directions in terms of prayer (a) above and make the same absolute after notice of the respondents;
- c/ pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

DRAWN AND FILED BY

(S.Muralidhar)

ADVOCATE FOR THE PETITIONER

NEW DELHI

DRAWN ON: 29.7.2003

FILED ON: 31.7.2003
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRL.M.P. NO. _____ OF 2003

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF:

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

AND IN THE MATTER OF

AN APPLICATION FOR PERMISSION TO FILE THE PRESENT SPECIAL LEAVE PETITION DIRECTLY
IN THIS HON'BLE COURT AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED 27.6.2003
OF THE ADDL. SESSIONS JUDGE, FAST TRACK COURT NO.1, VADODARA, GUJARAT

To

The Hon'ble the Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India

The humble petition of the
petitioner abovenamed –

MOST RESPECTFULLY SHOWETH

1. This Special Leave Petition under Article 136 of the Constitution of India is being filed by the National Human Rights Commission along with an application for permission to file Special Leave Petition against the Judgment dated 27.6.2003 passed by the Addl. Sessions Judge, Fast Track Court No1, Vadodara. By the said impugned Judgment and order the learned Addl. Sessions Judge has acquitted the accused and directed their released.

2. That for the sake of brevity the Petitioner is not narrating the full facts of the case herein in this application and crave leave of this Hon'ble Court to refer to and rely on the facts stated in the S.L.P. as forming part and parcel of this application for permission to file Special Leave Petition also.

3. The petitioner is a statutory body constituted under s.3 of the Protection of Human Rights Act, 1993 (PHRA). The preamble states that the PHRA is "An Act to provide for the constitution of a National Human Rights Commission, State Human Right Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto". The NHRC has been entrusted with several functions under s.12 PHRA. Under s.12 (a) the NHRC can enquire into violation of human rights or the negligence by a public servant in the prevention of such violation. Under s.12 (b) the petitioner can "intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court" and under s.12 (j) it can perform "such other functions as it may consider necessary for the promotion of human rights". Further, under s.18 (2) PHRA, the NHRC can approach the Supreme Court or the High Court for such directions, orders or writs as that Court may deem necessary

4. The petitioner submits that the Best Bakery Case was testimony to the violation of human rights and the NHRC is a concerned party. In the circumstances, the NHRC submits that it would be in the interest of justice to permit it to file the present special leave petition. Even earlier, the NHRC had occasion to petition this Hon'ble Court for reliefs, for instance, National Human Rights Commission v State of Arunachal Pradesh (1996) 1 SCC 742.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to

a/ permit the petitioner to file the present Special Leave Petition directly in this Hon'ble Court against the Impugned Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002; and

b/ pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

Drawn and filed by:

(S. Muralidhar)

Advocate for the Petitioner

New Delhi

Drawn on: 29.7.2003

Filed on: 31.7.2003

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P. NO. _____ OF 2003

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF :

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

AND IN THE MATTER OF

AN APPLICATION FOR PERMISSION TO URGE ADDITIONAL FACTS

To

The Hon'ble the Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India

The humble petition of the

petitioner abovenamed –

MOST RESPECTFULLY SHOWETH

1. The petitioner has this day filed the above special leave petition in this Hon'ble Court against the impugned Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002.
2. That for the sake of brevity the Petitioner is not narrating the full facts of the case herein in this application and craves leave of this Hon'ble Court to refer to and rely on the facts stated in the S.L.P. as forming part and parcel of this application for permission to urge additional facts also.
3. The petitioner is making this application to bring on record certain facts which transpired subsequent to the making of the impugned judgment by the trial court. It is submitted that the urging of the said facts would be extremely relevant for the purposes of the present special leave petition. The said additional facts are set out as under:
4. On 11.3.2003, one of the principal prosecution witnesses, Shaikh Zahira Bibi Habeebullah, some of whose next of kin were the victims of the carnage at the Best Bakery made a statement to the petitioner that she had, during her deposition in court, resiled from her earlier statement made to the police on account of pressure and threats to her life and the lives of surviving members of her family. She has also named certain persons who were responsible for her resiling from her earlier statement.
5. It is submitted that it would be in the interests of justice if this Hon'ble Court were to permit the petitioner to urge the additional facts as set out in para 4 above.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a/ permit the petitioner to urge additional facts as set out in para 4 of this application; and
- b/ pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

DRAWN AND FILED BY

(S. Muralidhar)

ADVOCATE FOR THE PETITIONER

NEW DELHI

DRAWN ON: 29.7.2003

FILED ON: 31.7.2003

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P. NO. _____ OF 2003

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003

IN THE MATTER OF :

National Human Rights Commission

Petitioner

//Versus//

State of Gujarat and others

Respondents

AND IN THE MATTER OF

AN APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION

To

The Hon'ble the Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India

The humble petition of the
petitioner abovenamed –

MOST RESPECTFULLY SHOWETH

1. The petitioner has this day filed the above special leave petition in this Hon'ble Court against the impugned Final Judgment and Order dated 27.6.2003 of the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002.
2. That for the sake of brevity the Petitioner is not narrating the full facts of the case herein in this application and craves leave of this Hon'ble Court to refer to and rely on the facts stated in the S.L.P. as forming part and parcel of this application for exemption from filing official translation also.
3. The petitioner states that the impugned judgment and order dated 27.6.2003 passed by the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat passed in Sessions Case No.248 of 2002 is in Gujarati language. The petitioner, in order to avoid any delay in the filing of the case, has got the same translated privately by a Gujarati knowing person and is filing the true English translation thereof. In the circumstances, the petitioner prays that it may be exempted from getting the aforesaid impugned judgment translated officially.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a/ exempt the petitioner from filing official translation of the judgment dated 27.6.2003 passed by the Additional Sessions Judge, Fast Track Court No.1, Vadodara, Gujarat in Sessions Case No.248 of 2002; and
- b/ pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

DRAWN AND FILED BY

(S. Muralidhar)

ADVOCATE FOR THE PETITIONER

NEW DELHI

DRAWN ON: 29.7.2003

FILED ON:31.7.2003

ANNEXURE-P/1

NATIONAL HUMAN RIGHTS COMMISSION

SARDAR PATEL BHAWAN

NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 1 March, 2002

CORAM

Justice Shri J.S.Verma, Chairperson
Dr. Justice K.Ramaswamy, Member
Justice Mrs. Sujata V. Manohar, Member

Shri Virendra Dayal, Member

PROCEEDINGS

This matter is registered for suo motu action on the basis of media reports, both print and electronic. In addition, a request on e-mail has also been received requesting this Commission to intervene.

This matter relates to the existing serious situation in the State of Gujarat. The news items report a communal flare-up in the State of Gujarat and what is more disturbing, they suggest inaction by the police force and the highest functionaries in the State to deal with this situation. In view of the urgency of the matter, it would not be appropriate for this Commission to stay its hand till the veracity of these reports has been established; and it is necessary to proceed immediately assuming them to be prima facie correct. The situation, therefore, demands that this Commission take note of these facts and steps-in to prevent any negligence in the protection of human rights of the people in the State of Gujarat irrespective of their religion.

Issue notice by FAX today to the Chief Secretary and Director General of Police, Gujarat for their reply within three days indicating the measures being taken and in contemplation to prevent any further escalation of the situation in the State of Gujarat which is resulting in continued violation of human rights of the people.

(Justice J.S.Verma)

Chairperson

(Justice K.Ramaswamy)

Member

(Justice Sujata V.Manohar)

Member

(Virendra Dayal)

Member

ANNEXURE-P/2

NATIONAL HUMAN RIGHTS COMMISSION

SARDAR PATEL BHAVAN

NEW DELHI

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 1 April 2002

CORAM

Justice Shri J.S. Verma, Chairperson
Justice Smt. Sujata V. Manohar, Member
Shri Virendra Dayal, Member

PROCEEDINGS

1. These Proceedings on the situation in Gujarat are being recorded in continuation of earlier Proceedings of the Commission dated 1 and 6 March 2002. They also follow upon a visit of the Chairperson of the Commission to Gujarat between 19-22 March 2002, during which mission he was accompanied by the Secretary-General of the Commission, Shri P.C. Sen, the Special Rapporteur of the Commission, Shri Chaman Lal, and his Private Secretary, Shri Y.S. Murthy. During the course of that mission, the team visited Ahmedabad, Vadodara and Godhra and held intensive discussions, inter alia, with the Chief Minister, Chief Secretary and senior officers of the State, eminent citizens, including retired Chief Justices and Judges of High Courts, former civil servants, leaders of political parties, representatives of NGOs and the business community, numerous private citizens and, most importantly, those who were the victims of the recent acts of violence.

2. In his meeting with the Chief Secretary and senior officers of the State Government, the Chairperson explained the purpose and timing of his visit. He indicated that he had not visited the State earlier in order not to divert the attention of the State authorities from the tasks in which they were engaged. However, the visit could not be further delayed as normalcy had not been restored in the State despite the passage of three weeks since the tragic events in Godhra. It was the concern of the Commission to see an end to the violence that was occurring and a restoration of normalcy. The Chairperson added that it was the role of the Commission to serve as a facilitator to improve the quality of governance, as a proper respect for human rights depended on such governance. This duty had been performed by the Commission in earlier instances too, notably after the Orissa cyclone and the Gujarat earthquake. As then, it was now the responsibility of the Commission to ensure that the violation of human rights ceased, that further violations were prevented and that those who were victims were expeditiously rehabilitated and their dignity restored.

3. The Commission would like to emphasize that the present Proceedings contain the Preliminary Comments of the Commission on the situation in Gujarat. Likewise, the Recommendations that it contains are of an immediate character and constitute the minimum that needs to be said at this stage.
4. This is because the report of the team that visited Gujarat is being sent under separate cover, confidentially, both to the Central and State Governments, and it would be appropriate to wait for their response to it before commenting in greater length on the situation or setting out comprehensive recommendations.
5. Further, while the team was able to meet with a considerable range of persons concerned with the situation in Gujarat who were desirous of meeting with it, the numbers of such persons was vast and it was not possible for the team, within the constraints of the time available and the circumstances prevailing on the ground, to meet individually with all of those who sought to interact with it. The team therefore encouraged those who wished to meet with it to do so, if possible, in groups and also to submit their views and concerns in writing. Numerous and voluminous written representations have thus been received by the Commission, both from groups and from individuals, during the visit of the team to Gujarat and subsequently. These have been and are being carefully examined. They have been of great value to the Commission in the recording of the Preliminary Comments and Recommendations contained in these Proceedings and their further analysis and study will contribute immensely to subsequent Proceedings of the Commission.
6. On 28 March 2002, the Commission also received a response from the Government of Gujarat to a notice that it had sent on 1 March 2000; it was entitled "Report on the incidents in Gujarat after the burning of the Sabarmati Express Train on 27th February 2002," and came with three Annexures A, B and C, providing details respectively on the "Law and Order Measures" taken by the State Government; the "Rescue, Relief and Rehabilitation Measures;" and a "Response to Press Clippings" that had been sent by the Commission to the State Government for comment. The Report of the State Government, hereinafter referred to as 'the Report,' has been carefully examined and taken into account in drafting the present Proceedings.
7. The Commission would like to emphasize that these Proceedings must therefore be seen as part of a continuing process to examine and address the human rights situation prevailing in Gujarat beginning with the Godhra tragedy and continuing with the violence that ensued subsequently. In this respect, the Proceedings in this case bear some similarity to the manner in which the Commission kept the situation under review, monitoring and commenting on it as the need arose, following both the super-cyclone in Orissa in 1999 and the earthquake in Gujarat in 2001.
8. There is, however, a fundamental difference as well. The earlier instances arose from catastrophic natural disasters which subsequently required a monitoring of the performance of the State to ensure that the rights of all, particularly those of the most vulnerable, were respected. In the present instance, however, the death and destruction sadly resulted from the inhumanity of human beings towards other human beings, and the large-scale violation of human rights. This therefore requires a response from the Commission of a qualitatively different kind.
9. The Commission would like to observe that the tragic events that have occurred have serious implications for the country as a whole, affecting both its sense of self-esteem and the esteem in which it is held in the comity of nations. Grave questions arise of fidelity to the Constitution and to treaty obligations. There are obvious implications in respect of the protection of civil and political rights, as well as of economic, social and cultural rights in the State of Gujarat as also the country more widely; there are implications for trade, investment, tourism and employment. Not without reason have both the President and the Prime Minister of the country expressed their deep anguish at what has occurred, describing the events as a matter of national shame. But most of all, the recent events have resulted in the violation of the Fundamental Rights to life, liberty, equality and the dignity of citizens of India as guaranteed in the Constitution. And that, above all, is the reason for the continuing concern of the Commission.
10. It would now be appropriate and useful to recall the background to the involvement of the Commission in this matter.
11. The Commission took suo motu action on the situation in Gujarat on 1 March 2002 on the basis of media reports, both print and electronic. In addition, it had also received a request by e-mail, asking it to intervene.

12. In its Proceedings of that date, the Commission inter alia observed that the news items reported on a communal flare-up and, more disturbingly, suggested inaction by the police force and the highest functionaries in the State to deal with the situation. The Commission added:

“In view of the urgency of the matter, it would not be appropriate for this Commission to stay its hand till the veracity of these reports has been established; and it is necessary to proceed immediately assuming them to be prima facie correct. The situation therefore demands that the Commission take note of these facts and steps-in to prevent any negligence in the protection of human rights of the people of the State of Gujarat irrespective of their religion.”

13. Notice was accordingly issued on 1 March 2002 to the Chief Secretary and Director General of Police, Gujarat, asking

“for their reply within three days indicating the measures being taken and in contemplation to prevent any further escalation of the situation in the State of Gujarat which is resulting in continued violation of human rights of the people.”

14. Meeting again on 6 March 2002, the Commission noted, inter alia, that it had requested its Secretary General, on 4 March 2002, to send a copy of its 1 March notice to its Special Representative in Gujarat, Shri Nampoothiri, for his information. The latter was also asked to send a report to the Commission on the situation, involving in that exercise other members of the Group constituted by the Commission to monitor the rehabilitation work in that State after the recent earthquake in Kutch.

15. In its Proceedings of 6 March 2002, the Commission further noted that

“a large number of media reports have appeared which are distressing and appear to suggest that the needful has not yet been done completely by the Administration. There are also media reports attributing certain statements to the Police Commissioner and even the Chief Minister which, if true, raise serious questions relating to discrimination and other aspects of governance affecting human rights.”

16. Instead of a detailed reply from the State Government to its notice of 1 March 2002, the Commission observed that it had received a request dated 4 March 2002, seeking a further 15 days to report as most of the State machinery is busy with the law and order situation, and it would take time to collect the information and compile the report.

17. The Commission’s Proceedings of 6 March 2002 accordingly stated

“May be, preparation of a comprehensive report requires some more time, but, at least, a preliminary report indicating the action so far taken and that in contemplation should have been sent together with an assurance of the State Government of strict implementation of the rule of law.”

The Commission recorded its disappointment that even this had not been done by the Government of Gujarat in a matter of such urgency and significance. It added that it “expects from the Government of Gujarat a comprehensive response at the earliest.”

18. A ‘Preliminary Report’ dated 8 March 2002 was received by the Commission from the Government of Gujarat on 11 March 2002. However, it was perfunctory in character. In the meantime, the Commission had received a fairly detailed report on the situation from its Special Group in Gujarat, comprising its Special Representative, Shri P.G.J. Nampoothri, former Director General of Police, Gujarat, Smt. Annie Prasad, IAS (Retd) and Shri Gagan Sethi, Director, Jan Vikas. With violence continuing, it was in such circumstances that the Commission decided that the Chairperson should lead a team of the Commission on a mission to Gujarat between 19-22 March 2002. And it was pursuant to this that the detailed Report of the State of Gujarat was received on 28 March 2002, in response to the Commission’s notice of 1 March 2002 and the discussions held with the team.

19. There follow below certain Preliminary Comments and Recommendations of the Commission on the situation in Gujarat. As indicated above, these will be followed, as required, by other Proceedings, containing

Comments and Recommendations, which will take into account the response that will be received from the Central and State Governments to the mission-report of the Commission's team, a further reading and analysis of the voluminous material that has been, and is being, submitted to the Commission, and the situation as it develops on the ground.

Preliminary Comments:

20. (i) The Statute of the Commission, as contained in the Protection of Human Rights Act, 1993, requires the Commission under the provisions of Section 12, to perform all or any of the following functions, namely:-

“(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of

(i) Violation of human rights or abetment thereof; or

(ii) Negligence in the prevention of such violation, by a public servant;

(b) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(c) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(d) such other functions as it may consider necessary for the promotion of human rights.”

The term ‘human rights’ is defined to mean the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India (Section 2(1)(d)), and the International Covenants are defined as the “International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December 1966” (Section 2(1)(f)).

(ii) It is therefore in the light of this Statute that the Commission must examine whether violations of human rights were committed, or were abetted, or resulted from negligence in the prevention of such violation. It must also examine whether the acts that occurred infringed the rights guaranteed by the Constitution or those that were embodied in the two great International Covenants cited above.

(iii) The Commission would like to observe at this stage that it is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of 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. 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.

(iv) The first question that arises therefore is whether the State has discharged its responsibilities appropriately in accordance with the above. It has been stated in the Report of the State Government that the attack on kar sevaks in Godhra occurred in the absence of “specific information about the return of kar sevaks from Ayodhya” (p. 12 of the Report). It is also asserted that while there were intelligence inputs pertaining to the movement of kar sevaks to Ayodhya between 10-15 March 2002, there were no such in-puts concerning their return either from the State Intelligence Branch or the Central Intelligence Agencies (p. 5) and that the “only message” about the return of kar sevaks, provided by the Uttar Pradesh police, was received in Gujarat on 28 February 2002 i.e., after the tragic incident of 27 February 2002 and even that did not relate to a possible attack on the Sabarmati Express.

(v) The Commission is deeply concerned to be informed of this. It would appear to constitute an extraordinary lack of appreciation of the potential dangers of the situation, both by the Central and State intelligence agencies. This is the more so given the history of communal violence in Gujarat. The Report of the State Government itself states:

“The State of Gujarat has a long history of communal riots. Major riots have been occurring periodically in the State since 1969. Two Commissions of Inquiry viz., the Jagmohan Reddy Commission of Inquiry, 1969, and the Dave Commission of Inquiry, 1985, were constituted to go into the widespread communal violence that erupted in the State from time to time. Subsequently, major communal incidents all over the State have taken place in 1990 and in 1992-93 following the Babri Masjid episode. In fact, between 1970 and 2002, Gujarat has witnessed 443 major communal incidents. Even minor altercations, over trivial matters like kite flying have led to communal violence.” (p. 127).

The Report adds that the Godhra incident occurred at a time when the environment was already surcharged due to developments in Ayodhya and related events (also p. 127).

Indeed, it has been reported to the Commission that, in intelligence parlance, several places of the State have been classified as communally sensitive or hyper-sensitive and that, in many cities of the State, including Ahmedabad, Vadodara and Godhra, members of both the majority and minority communities are constantly in a state of preparedness to face the perceived danger of communal violence. In such circumstances, the police are reported to be normally well prepared to handle such dangers and it is reported to be standard practice to alert police stations down the line when sensitive situations are likely to develop.

(vi) Given the above, the Commission is constrained to observe that a serious failure of intelligence and action by the State Government marked the events leading to the Godhra tragedy and the subsequent deaths and destruction that occurred. On the face of it, in the light of the history of communal violence in Gujarat, recalled in the Report of the State Government itself, the question must arise whether the principle of ‘*res ipsa loquitur*’ (‘the affair speaking for itself’) should not apply in this case in assessing the degree of State responsibility in the failure to protect the life, liberty, equality and dignity of the people of Gujarat. The Commission accordingly requests the response of the Central and State Governments on this matter, it being the primary and inescapable responsibility of the State to protect such rights and to be responsible for the acts not only of its own agents, but also for the acts of non-State players within its jurisdiction and any inaction that may cause or facilitate the violation of human rights. Unless rebutted by the State Government, the adverse inference arising against it would render it accountable. The burden is therefore now on the State Government to rebut this presumption.

(vii) An ancillary question that arises is whether there was adequate anticipation in regard to the measures to be taken, and whether these measures were indeed taken, to ensure that the tragic events in Godhra would not occur and would not lead to serious repercussions elsewhere. The Commission has noted that many instances are recorded in the Report of prompt and courageous action by District Collectors, Commissioners and Superintendents of Police and other officers to control the violence and to deal with its consequences through appropriate preventive measures and, thereafter, through rescue, relief and rehabilitation measures. The Commission cannot but note, however, that the Report itself reveals that while some communally-prone districts succeeded in controlling the violence, other districts – sometimes less prone to such violence – succumbed to it. In the same vein, the Report further indicates that while the factors underlining the danger of communal violence spreading were common to all districts, and that, “in the wake of the call for the ‘Gujarat Bandh’ and the possible fall-out of the Godhra incident, the State Government took all possible precautions” (p. 128), some districts withstood the dangers far more firmly than did others. Such a development clearly points to local factors and players overwhelming the district officers in certain instances, but not in others. Given the widespread reports and allegations of groups of well-organized persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction in certain districts – sometimes within view of police stations and personnel – the further question arises as to what the factors were, and who the players were in the situations that went out of control. The Commission requests the comments of the State Government on these matters.

(viii) The Commission has noted that while the Report states that the Godhra incident was “premeditated” (p. 5), the Report does not clarify as to who precisely was responsible for this incident. Considering its gruesome nature and catastrophic consequences, the team of the Commission that visited Godhra on 22 March

2002 was concerned to note from the comments of the Special IGP, CID Crime that while two cases had been registered, they were being investigated by an SDPO of the Western Railway and that no major progress had been made until then. In the light of fact that numerous allegations have been made both in the media and to the team of the Commission to the effect that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to 'influence' the working of police stations by their presence within them, the Commission is constrained to observe that there is a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission notes, for instance, that in Ahmedabad, in most cases, looting was "reported in well-to-do localities by relatively rich people" (p. 130). Yet the Report does not identify who these persons were. The conclusion cannot but be drawn that there is need for greater transparency and integrity to investigate the instances of death and destruction appropriately and to instil confidence in the public mind.

(ix) The Report takes the view that "the major incidents of violence were contained within the first 72 hours." It asserts, however, that "on account of widespread reporting both in the visual as well as the electronic media, incidents of violence on a large-scale started occurring in Ahmedabad, Baroda cities and some towns of Panchmahals, Sabarkantha, Mehsana, etc" in spite of "all possible precautions having been taken" (p. 128-129). The Report also adds that various comments attributed to the Chief Minister and Commissioner of Police, Ahmedabad, among others, were torn out of context by the media, or entirely without foundation.

(x) As indicated earlier in these Proceedings, the Commission considers it would be naïve for it to subscribe to the view that the situation was brought under control within the first 72 hours. Violence continues in Gujarat as of the time of writing these Proceedings. There was a pervasive sense of insecurity prevailing in the State at the time of the team's visit to Gujarat. This was most acute among the victims of the successive tragedies, but it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting and the other retired who were compelled to leave their own homes because of the vitiated atmosphere. There could be no clearer evidence of the failure to control the situation.

(xi) The Commission has, however, taken note of the views of the State Government in respect of the media. The Commission firmly believes that it is essential to uphold the Right to Freedom of Speech and Expression articulated in Article 19(1)(a) of the Constitution, which finds comparable provision in Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, 1966. It is therefore clearly in favour of a courageous and investigative role for the media. At the same time, the Commission is of the view that there is need for all concerned to reflect further on possible guidelines that the media should adopt, on a 'self-policing' basis, to govern its conduct in volatile situations, including those of inter-communal violence, with a view to ensuring that passions are not inflamed and further violence perpetrated. It has to be noted that the right under Article 19(1)(a) is subject to reasonable restrictions under Article 19(2) of the Constitution.

(xii) The Commission has noted the contents of the Report on two matters that raised serious questions of discriminatory treatment and led to most adverse comment both within the country and abroad. The first related to the announcement of Rs. 2 lakhs as compensation to the next-of-kin of those who perished in the attack on the Sabarmati Express, and of Rs. 1 lakh for those who died in the subsequent violence. The second related to the application of POTO to the first incident, but not to those involved in the subsequent violence. On the question of compensation, the Commission has noted from the Report that Rs. 1 lakh will be paid in all instances, "thus establishing parity." It has also noted that, according to the Report, this decision was taken on 9 March 2002, after a letter was received by the Chief Minister, "on behalf of the kar sevaks," saying "that they would welcome the financial help of Rs. 1 lakh instead of Rs. 2 lakhs to the bereaved families of Godhra massacre" (see p. 115). This decision, in the view of the Commission, should have been taken on the initiative of the Government itself, as the issue raised impinged seriously on the provisions of the Constitution contained in Articles 14 and 15, dealing respectively with equality before the law and equal protection of the laws within the territory of India, and the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. The Commission has also noted the contents of the Report which state that "No guidelines were given by the Home Department regarding the type of cases in which POTO should or should not be used" and that, subsequent to the initial decision to apply POTO in respect of individual cases in Godhra, the Government received legal advice to defer "the applicability of POTO till the investigation is completed" (pp. 66-67). The Commission intends to monitor this matter further, POTO having since been enacted as a law.

(xiii) The Commission has taken good note of the “Rescue, Relief and Rehabilitation Measures” undertaken by the State Government. In many instances, strenuous efforts have been made by Collectors and other district officers, often acting on their own initiative. The Commission was informed, however, during the course of its visit, that many of the largest camps, including Shah-e-Alam in Ahmedabad, had not received visits at a high political or administrative level till the visit of the Chairperson of this Commission. This was viewed by the inmates as being indicative of a deeper malaise, that was discriminatory in origin and character. Unfortunately, too, numerous complaints were received by the team of the Commission regarding the lack of facilities in the camps. The Commission has noted the range of activities and measures taken by the State Government to pursue the relief and rehabilitation of those who have suffered. It appreciates the positive steps that have been taken and commends those officials and NGOs that have worked to ameliorate the suffering of the victims. The Commission, however, considers it essential to monitor the on-going implementation of the decisions taken since a great deal still needs to be done. The Commission has already indicated to the Chief Minister that a follow-up mission will be made on behalf of the Commission at an appropriate time and it appreciates the response of the Chief Minister that such a visit will be welcome and that every effort will be made to restore complete normalcy expeditiously.

(xiv) In the light of the above, the Commission is duty bound to continue to follow developments in Gujarat consequent to the tragic incidents that occurred in Godhra and elsewhere. Under its Statute, it is required to monitor the compliance of the State with the rule of law and its human rights obligations. This will be a continuing duty of the Commission which must be fulfilled, Parliament having established the Commission with the objective of ensuring the “better protection” of human rights in the country, expecting thereby that the efforts of the Commission would be additional to those of existing agencies and institutions. In this task, the Commission will continue to count on receiving the cooperation of the Government of Gujarat, a cooperation of which the Chief Minister has stated that it can be assured.

Recommendations

21. The Commission now wishes to make a first set of Recommendations for the immediate consideration of the Central and State Governments. As indicated earlier, once a response has been received from these Governments on the report of the visit of the Commission’s team to Gujarat, and a full analysis made of the numerous representations received by the Commission, additional Proceedings will be recorded by the Commission on the situation in Gujarat, offering further Comments and Recommendations.

I. Law & Order

(i) In view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being ‘influenced’ by extraneous

considerations or players, the Commission is of the view that the integrity of the process has to be restored. It therefore recommends the entrusting of certain critical cases to the CBI. These include the cases relating to the

- Godhra incident, which is at present being investigated by the GRP;
- Chamanpura (Gulbarga Society) incident;
- Naroda Patiya incident;
- Best Bakery case in Vadodara; and the
- Sadarpura case in Mehsana district.

- (ii) The Commission recommends that Special Courts should try these cases on a day-to-day basis, the Judges being handpicked by the Chief Justice of the High Court of Gujarat. Special Prosecutors should be appointed as needed. Procedures should be adopted for the conduct of the proceedings in such a manner that the traumatized condition of many of the victims, particularly women and children, is not aggravated and they are protected from further trauma or threat. A particular effort should be made to depute sensitive officers, particularly officers who are women, to assist in the handling of such cases.
- (iii) Special Cells should be constituted under the concerned District Magistrates to follow the progress of the investigation of cases not entrusted to the CBI; these should be monitored by the Additional Director-General (Crime).
- (iv) Specific time-frames should be fixed for the thorough and expeditious completion of investigations.
- (v) Police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.
- (vi) Material collected by NGOs such as Citizen's Initiative, PUCL and others should also be used.
- (vii) Provocative statements made by persons to the electronic or print media

should be examined and acted upon, and the burden of proof shifted to such persons to explain or contradict their statements.

- (viii) Given the wide variation in the performance of public servants in the discharge of their statutory responsibilities, action should be initiated to identify and proceed against those who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter. By the same token, officers who have performed their duties well, should be commended.

II. Camps

- (i) Visits to camps by senior political leaders and officers should be organized in a systematic way in order to restore confidence among those who have been victimized. NGOs should be involved in the process and the management and running of the camps should be marked by transparency and accountability
- (ii) Senior officers of the rank of Secretary and above should be given specific responsibility in respect of groups of camps.
- (iii) Special facilities/ camps should be set-up for the processing of insurance and compensation claims. The Chief Minister of the State had requested the Commission to issue an appropriate request to insurance companies for the expeditious settlement of claims of those who had suffered in the riots. The Commission will readily do so and recommends that the State Government send to it the necessary details at an early date in order to facilitate such supportive action.
- (iv) Inmates should not be asked to leave the camps until appropriate relief and rehabilitation measures are in place for them and they feel assured, on security grounds, that they can indeed leave the camps.

III. Rehabilitation

- (i) The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, inter alia by the State.
- (ii) Adequate compensation should be provided to those who have suffered. This will require an augmentation of the funds allocated thus far, through cooperative arrangements involving both the State and Central Governments. Efforts should be made to involve HUDCO, HFDC and international financial and other agencies and programmes in this process.
- (iii) The private sector, including the pharmaceutical industry, should also be requested to participate in the relief and rehabilitation process and proper coordinating arrangements established.
- (iv) The role of NGOs should be encouraged and be an intrinsic part of the overall effort to restore normalcy, as was the case in the coordinated effort after the earthquake. The Gujarat Disaster Management Authority, which was also deeply engaged in the post-earthquake measures, should be requested to assist in the present circumstances as well.
- (v) Special efforts will need to be made to identify and assist destitute women and orphans, and those subjected to rape. The Women and Child Development Department, Government of India and concerned international agencies/programmes should be requested to help. Particular care will need to be taken to mobilize psychiatric and counselling services to help the traumatized victims. Special efforts will need to be made to identify and depute competent personnel for this purpose.
- (vi) The media should be requested to cooperate fully in this endeavour, including radio, which is often under-utilized in such circumstances.

IV. Police Reform

- (i) The Commission would like to draw attention to the deeper question of Police

Reform, on which recommendations of the National Police Commission and of the National Human Rights Commission have been pending despite repeated efforts to have them acted upon. The Commission is of the view that recent events in Gujarat and, indeed, in other States of the country, underline the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate it from extraneous influences.

(Justice J.S. Verma)

Chairperson

(Justice Sujata V. Manohar

Member

(Virendra Dayal)

Member

