

Re-constitution of the Committee with the appointment of Sh. Justice P. Subramanian Poti and Sh. P. A. Rosha as, Chairman and Member respectively

3.1. As a result of the quashing of the Notification dated the 23rd February, 1987 appointing Justice M. L. Jain - Sh. A. K. Banerji committee, the Delhi Administration, Delhi issued an order No. F.10/(65)/87/Home Police-II dated the 22nd March 1990 wherein the Administrator of the Union Territory of Delhi appointed a fresh Committee consisting of Justice P. Subramanian Poti, a retired Chief Justice of Gujarat High Court as Chairman and Sh. P. A. Rosha, a retired Officer of the Indian Police Service as Member in replacement of Justice M. L. Jain - Sh. A. K. Banerji with the following terms of reference;

- To examine whether there were cases of omission to register or properly investigate offences committed in Delhi during the period of riots from 31st October 1984 to 7th November 1984.
- To recommend to the Administrator, where necessary, the registration of cases and their investigation.
- To make suggestions to the Administrator, where necessary, for the conduct of investigation and prosecution of cases.

3.2. The Administrator hereby authorizes the Committee to look into the papers relating to its terms of reference and to obtain such information as it deems necessary from the Police and the Prosecution Agency in order to carry out its functions.

The Administrator is further pleased to direct that the Committee will give a monthly report of the progress of its work to the Administrator. The Committee will function for a period of six months.

By Order and in the name of the
Administrator of the Union Territory of Delhi
Sd/-

3.3. Justice P. Subramonian Poti - Sh. P. A. Rosha assumed charge as Chairman and Member of the Committee on 22nd March 1990 and 27th March 1990 respectively.

3.4. To begin with the Committee considered the implications of the Judgment dated the 4th October 1989 of the Hon'ble High Court of Delhi, which had struck down the Notification appointing Justice M. L. Jain - Sh. A. K. Banerji Committee. Justice P. Subramonian Poti, Chairman of the Committee succinctly summarized the Judgment as under: -

- i) Powers conferred on the Committee could not have been so conferred under law.
- ii) The Court finds it difficult to accept the contention that the Committee did not have jurisdiction to record statements of persons.
- iii) The Committee could seek information through affidavits.
- iv) Even though the terms of reference do not refer to any power to receive any fresh material or information, without someone informing the Committee, the Committee could not have been aware of omissions or improper investigation.
- v) To restrict the Committee to documents, which already existed would have hampered the Committee in carrying out its duties.
- vi) However, the Committee was not authorized to accept or act on any fresh allegations against individuals pertaining to the said incidents of rioting. In other words, whereas it was open to the Committee to seek information where there has been omission to register or properly investigate offences, the Committee has no jurisdiction to accept affidavits in which fresh allegations were levelled for the first time, which allegation was not sought to be levelled at the time of or soon after the riots has taken place.

3.5. We are, by and large, in agreement with the above synopsis. However, we would like to extract some of the observations made by the High Court in the aforesaid Judgement for proper comprehension of the scope and ambit of powers of the re-constituted Committee.

“ It is Clear that the Lt. Governor has the power of super intendance under Section 4 of the Delhi Police Act, but he can only ask another police officer to discharge the duties as an investigator, if he is otherwise competent to investigate.”

“ The decision whether to register an F.I.R., how to proceed with the investigation, are different steps in the course of investigation. The power of monitoring which has been conferred on the Committee by the impugned Notification is, in fact, a power of investigating and this power cannot be vested in anyone who is not otherwise, in law, entitled to investigate. The Lt. Governor therefore, could have conferred the power contained in the Notification on any superior police officer, but this power could not be conferred on an authority or a body, which is otherwise not entitled either under the Cr. P. C. or under the Delhi Police Act to carry out investigation. “

“ It is well settled that a Commission appointed under the Commissions of Inquiry Act can only make recommendations to the Government. The findings or recommendations to the Commission cannot be enforced. In the present case, what the Administrator has sought to do is not to give recommendatory powers to the Committee. The Committee has been empowered to give directions to the police and to the prosecuting agency. Such powers could not have been conferred on the Committee, if it had been constituted under the Commissions of Inquiry Act. “

“ It is true that the Committee was not a Court and it is also correct that evidence is presented before a Court, we, however, are unable to subscribe to the view that the recording of evidence or taking an affidavit amounts to recording of evidence, which the Committee was prohibited to do. The Committee was seeking information with regard to the various incidents, which had taken place during the riots. A public notice has been issued asking for the information to be supplied, inter-alia by affidavits. The statement was sought in the form of an affidavit so that the deponent was made aware of the seriousness of the situation and it was expected that a person would not state falsehood when he swears an affidavit on oath. We find no provision of law which, in any way, prohibits a Committee or a person requiring information to be given by way of an affidavit.

The impugned Notification does not expressly give the power to the Committee to receive any fresh material or information or allegations with regard to the incidents of rioting. The Committee was, nevertheless, required to examine whether there were cases of omission to register or properly investigate offences.”

" It was necessary, in order to perform functions enumerated in Clause 3, for the Committee to seek information as to whether there have been instances of omission to register cases or instances of improper investigation. This information could be supplied either by the persons who had sought to register the cases or by someone else who knew about such instances. To restrict the Committee to the documents which already existed would have hampered the Committee in carrying out its duties. We are, however, in agreement with Mr. Gupta that the Committee was not authorized to accept or act on any fresh allegations against individuals pertaining to the said incidents of rioting. In other words, whereas it was open to the Committee to get information where there has been omission to register or properly investigate offences, the Committee had no jurisdiction to accept any affidavits in which fresh allegations were levelled for the first time, which allegations were not sought to be levelled at the time of or soon after riots had taken pace."

3.6. Keeping in view the letter and spirit the judgment of the Hon'ble High Court of Delhi, the Committee took up the examination of affidavits of 669 affidavits received from Justice Ranganath Misra Commission of Inquiry and 415 affidavits filed before Justice M. L. Jain - Sh. A. K. Banerji Committee in 1987. Scrutiny and tabulation of the affidavits were undertaken with a view to ascertain whether these cases registered by the Delhi Police were in respect of offences disclosed in those affidavits and whether these cases were properly investigated. The Committee, therefore, needed all the relevant police records from Delhi Administration / Delhi Police pertaining to the October - November 1984 riots.

3.7. For this purpose the Committee's Secretary wrote a D. O. letter No. F.9/(1)/Committee/P.R./90/221 dated the 12th April 1990 to Sh. R. Badrinath, Secretary (Home), Delhi Administration drawing his attention to Volume 'II' of Justice Ranganath Misra Commission of Inquiry and requested him to make available copies of all the 403 F.I.Rs. registered by the Delhi Police in respect of riots cases to the Committee urgently with their up-to-date position. The Committee also pointed out (quoting from pages 63 - 65 of Volume 'I' of the report of Justice Ranganath Misra Commission of Inquiry) that several instances had come to its notice where a combined F.I.R. had been recorded in regard to various separate incidents. The Committee desired that it would like to be specifically informed where more than

one separate incidents were lumped together in the F.I.Rs. or where such incidents were mentioned in subsequent case diaries and investigation taken up without recording a separate F.I.R. The information sought by the Committee was further explained in detail vide Committee's letter of even No. dated the 18th May 1990 addressed to the Secretary (Home), Delhi Administration. The Committee re-iterated that it had come to their notice that there were a large number of cases where common F.I.Rs. were drawn up covering several separate incidents. The complaints received by the Delhi Police were mentioned in the subsequent case diaries without recording separate F.I.R. and were treated as investigated or dealt with. Therefore, copies of the case diaries and complaints received by the Delhi Police were required as also the charge-sheets sent up by the Delhi Police in order to ascertain the specific occurrence and allegations for which the persons were challaned even though the occurrence and allegations did not find mention in the F.I.Rs. In its monthly progress report for the month of May, 1990 sent to Lt. Governor of Delhi on 6th June 1990, the Committee pointed out that unless these records were made available no further progress could be possible.

3.8. The urgency of the availability of the relevant police records was further emphasised by the Chairman of the Committee, Justice P. Subramonian Poti in the meeting, convened at his request (contained in his letter dated the 18th April 1990 addressed to the Lt. Governor of Delhi) by the Lt. Governor of Delhi on 8th May 1990. This meeting which was attended, besides the Chairman and Member of the Committee, by the Chief Secretary, Secretary (Home), Commissioner of Police and other senior officers of the Delhi Administration as also senior officers of the Committee, took up certain decisions, reproduced below;

- i) The Additional Commissioner of Police, Delhi would ensure that all the relevant police records / information is made available to the Chairman at the earliest.
- ii) The Commissioner of Police, Delhi should nominate a senior Officer to liaise with the Committee on a continuing basis.
- iii) Delhi Police would constitute about six - eight investigation teams immediately consisting of persons known for honesty and integrity and who had not come in

any adverse light during October - November 1984 riots. These investigation teams would deal exclusively with the cases recommended by the Committee for registration and investigation to the Lt. Governor of Delhi, and will operate under the Crime Branch of Delhi Police under one or two Deputy Commissioners of Police who would also deal with this matter exclusively. An Additional Commissioner of Police, Delhi would be the incharge of the entire operations and it would be considered whether for this purpose an Officer could be taken on deputation from the Central Bureau of Investigation.

iv) It was noted that whenever the Committee felt its examination revealed direct complicity of the Police or where the matter was serious enough, on a selective basis, they could recommend handling over of such cases to the Central Bureau of Investigation for direct investigation. The Lt. Governor of Delhi agreed to bring this to the notice of the Home Minister so that Central Bureau of Investigation would be in readiness for taking up such cases as and when they were referred to them.

v) Creation of an additional post of one D.I.G. (Police) and one Legal Advisor.

3.9. As a result of the decisions taken in the meeting, Sh. R. Tewari, Deputy Commissioner of Police (Crime & Railways), Delhi Police was assigned to liaise with the Committee and he had a meeting with the Member of the Committee on 22nd June 1990 and assured to make available all the relevant police records by the first week of July 1990.

3.10. After protracted correspondence with the Delhi Administration, and personal contacts with the Chief Secretary, Secretary (Home), Delhi Administration and the Commissioner of Police, Delhi and other concerned officials, the Committee was able to procure by the end of July - August 1990 most of the records required to be examined in correlation with the affidavits. By the end of August 1990, the Committee completed its first track of tabulation of the affidavits filed before Justice Ranganath Misra Commission of Inquiry and most of these filed before erstwhile Justice M. L. Jain - Sh. A. K. Banerji Committee. The process of cross-checking of the affidavits with the police records and their examination to ascertain whether firstly, the cases were registered by the Delhi Police with regard to offences alleged in these

affidavits and secondly, whether these cases were properly investigated was taken up. As a result of the exercise, the Committee sent first batch of its recommendations in respect of 11 (eleven) affidavits to the Administrator of the Union Territory of Delhi on 9th August 1990. The second batch of the recommendations of the Committee, consisting of 19 (nineteen) affidavits was sent to the Administrator of the Union Territory of Delhi on 11th September 1990. Thus, a total number of 30 (thirty) cases (affidavits) were sent to the Administrator of the Union Territory of Delhi during the months of August and September 1990.

3.11. The Committee held a second meeting with the Lt. Governor of Delhi on 31st August 1990 and had detailed discussion regarding the conduct of investigation and prosecution in respect of the offences committed during October - November, 1984 riots in Delhi and also the question of earmarking the Courts exclusively for trial of these cases.

3.12. The Chairman of the Committee, Sh. Justice P. Subramonian Poti and member, Sh. P. A. Roshia of the Committee relinquished their office on 22nd September 1990, after completion of their tenure of six months.

3.13. It would be thus seen that Justice Poti - Sh. Roshia Committee had to do a lot of spade work to procure all relevant records from various Police Stations relating to October - November, 1984 riots cases and streamline the procedure for detailed scrutiny thereof by the team of police officials under the supervision and guidance of a D.I.G. (Police) attached to the Committee. Of Course, the chairman and the member of the Committee had to issue necessary instructions and lay guidelines from time to time. The whole process was indeed so laborious and time-consuming because the scrutiny teams had to minutely examine each and every police case diary in order to find out whether the incident narrated in an affidavit had been dealt with by the Investigating Officer or not. If so, to what extent and with what result. The task was rendered formidable because of non-registration of cases in respect of each information relating to Commission of cognizable offences and various complainants having been simply examined in the omnibus F.I.R. of a general and vague nature under Section 161 Cr. P. C. Yet another factor which enormously increased the work was incorrect information received from the various Deputy Commissioners of Police / S. H. Os. as to how the particular

complaints relating to October - November, 1984 riots cases were dealt with by police officers of the concerned Police Station. In a large number of cases it was found on scrutiny that the F.I.R. number mentioned by the Deputy Commissioner of Police / S. H. O. in their replies to the question made by the Committee did not contain any case diary in that F.I.R. with the inevitable consequence that all the case diaries relating to October - November, 1984 riots cases registered at a Police Station had to be scanned in order to ascertain whether the grievance of the deponent had at all been dealt with or not and if so, how.

3.14. A sample list of cases, wherein local police reported linking of the complaints in particular F.I.Rs. which information on check made in the Committee has been found to be incorrect, is enclosed as Annexure '1'.

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