REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11381OF 2016
(Arising out of S.L.P.(C) No.26961 of 2016)

State of Uttar Pradesh and Others Appellants

Versus

Subhash Chandra Jaiswal and Others Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. Ordinarily we would have been loath to entertain an appeal by special leave challenging the interim order, but we are compelled to do so in the instant case. There is a singular reason for the same since the High Court has travelled much beyond the *lis* to issue directions which, we

are disposed to think, it could not have.

3. The factual matrix as unfolded is that the District Magistrate, Allahabad and Raibareli granted excise licence to run country liquor shops under U.P. Excise (Settlement of Licenses Retail Sale of Country Liquor) Rules, 2002, license for foreign liquor under U.P. Excise Settlement of Licenses for Retail Sale of Foreign Liquor (excluding Beer and Wine) Rules, 2001 and license for model shop under U.P. Excise (Settlement of Licenses for Retail License for Model Shop of Foreign Liquor) Rules, 2003. One of the eligibility conditions for grant of license is that licensee and his family members must possess good moral character and have no criminal background. As the facts would uncurtain, an FIR dated 6.2.2016 was lodged by the respondent No. 1 which gave rise to Crime No. 0049 of 2016 under Sections 419, 420, 467, 468, 471 IPC at Police Station George Town, District Allahabad. It was alleged in the FIR that Vinod Kumar Tripathi and his wife Asha Tripathi, respondent nos. 2 and 3 respectively had committed fraud and forgery by opening bank account in the name of the respondent no.1 by affixing his photograph, submitting his ID and had

withdrawn amount by forging his signature and deposited the security amount with District Excise Officer, Allahabad. The endeavour was to highlight that the said respondents had the criminal antecedents.

4. A writ petition was filed under Article 226 of the Constitution for issue of a writ, order or direction in the nature of mandamus commanding the competent authorities to take necessary action against the opposite party Nos. 7 and 8 as they had violated various rules.

5. The High Court called for the case diary which showed that a final report had been submitted by the Investigating Officer on 23.04.2016 in the office of the Circle Officer, Colonelganj, Allahabad and observed that no attempt had been made by the investigating officer to find out whether the signatures alleged to have been made by the respondent no.1 for the purpose of opening the account were actually made by him or not. The Court also took note of the stand of the bank and observed that if signatures are forged and the informant-respondent no.1 was not present at the time of opening of the account, role of bank officials would also be dubious, suspicious and they may become co-accused.

6. After so observing, the High Court adverted to the methods of investigation and expressed the view that no attempt was made by the investigating officer to find out the genuineness of signature from the hand-writing expert despite the fact that the informant-respondent no.1 had categorically challenged the signatures and no satisfactory reply was given by him. The High Court called upon the Senior Superintendent of Police, Allahabad and District Magistrate, Allahabad, who are in charge of criminal administration to explain the obtaining scenario. The SSP, Allahabad, appeared before the High Court and stated that there had been serious lapses by the investigating officer since appropriate and necessary steps were not taken in the matter of investigation. The SSP further stated that though some training was given to the Sub-Inspectors and Inspectors to conduct investigation, yet most of the time, the said officers remained busy carrying on other duties which resulted in getting less time for investigation purposes. It was also stated by him that in Allahabad district about 250 officers were conducting investigation for more than 11000 offences registered.

7. Noting the statement of the SSP, the High Court observed that it depicts a very sorry state of affairs of maintenance of law and order in the State and paints a grim picture in which State is functioning, ignoring one of the most important aspects of administration, i.e., public safety, security and maintenance of law and order. It referred to the order dated 14.10.2011 passed in Writ-C No. 40344 of 2011 titled ***Raj Prakash v. State of U.P. and others***, reproduced few passages from it and thereafter stated thus:-

> "13. Police force is meant for protection of people. It's sole aim and purpose is to maintain law and order by preventing crime and if committed, to find out and book guilty person so as to get them punished in accordance with law. There is no other agency in the State except Police who has this statutory as well as constitutional obligation for protection of people. But unfortunately, it is still living in colonial State of affairs when Police used to be deployed against public to crush their genuine rights and demands. Police, at that time, reflected glorified image of ruling Colonial State. It treated inhabitants of this country as slaves and that is why always tried not to allow them to raise their voice against Empire. For more than half a century, India has attained it's independence and now is governed by the Constitution, given by the people to itself so as to function, "for the people", "by the people", "of the people" principle but Police has not mend it's ways.

> 14. Today people are frightened more with police than criminals. There is virtually a lack of confidence with this Uniformed Force. Judicial cognizance can be taken of several heinous crimes being committed almost daily and many a times with the nexus of politicians/criminals whereby common and innocent people are being made target. Criminality on the part of police is highly dangerous being a double edged weapon. When they commit crime, they are themselves being investigating agency, naively cover up the matter. The result is that the courts of law, ultimately, ordinarily fail to punish guilty, for want of proper evidence for which the agency is responsible".

8. The Court further proceeded to reproduce para 20 of the order in PIL No. 33084 of 2014 decided on 11th July, 2014 and other writ petitions and observed thus:-

> "18. Laxity, incapacity, inefficiency or lack of knowledge, awareness or competence in making investigation on the part of Investigating Officers, who are appointed by State, without ensuring their basic qualifications, whether they meet requirement of job or not, is another major reason for superficial and shallow investigation which is aggravating crimes. Criminals are not deterred due to lack of effective policing on all aspects. The real burden is placed on judiciary when offenders, who have committed the crime in broad daylight and in presence of several persons, walk out free due to serious lapses on the part of investigating authorities and for their failure in collecting crucial evidence. Most of the time, crime scene is not taken care so as to prevent contamination of evidence and by the time one realises, it is too late in the day and becomes very difficult to collect credible evidence, sufficient to book culprit for the offence he has committed.

> 19. Situation is further worsened for want of effective forensic investigation inasmuch as facilities for forensic test and investigation are almost negligible in the State. We are told that there are only two forensic labs in Agra and Lucknow. Population of this State is now more than 20 crores and number of crimes registered every year is in lacs. The facts are self-speaking to show that there is no serious attempt, will and intention on the part of Executive to provide competent investigating staff and effective supporting mechanism including forensic test facilities and this, ultimately, causes serious dent in either bringing a culprit to court or to prosecute successfully. Infrastructure, staff and other requisite facilities for forensic investigation available at district level is not a luxury but in the present scenario, it is a necessity."

9. The High Court, as the impugned order reflects, proceeded to issue certain directions. They are reproduced below:-

> "In our view, time has come where State should be asked to show its real sincerity required in the field not only for effective registration of cognizable offences but also proper and well studied investigation and effective prosecution to ensure appropriate punishment to guilty persons. Since, even District level Officers, we find, are not competent enough to take appropriate steps in this regard and nothing can be done unless top authorities take steps, we direct Principal Secretary (Home), U.P., Lucknow and Director General of Police, U.P., Lucknow to consider over following aspects and submit their reply through personal affidavits, by 16th September, 2016:-
>
> (i) Work of investigation of crime and prosecution

be separated from normal policing or prevention of crime and other works, by constituting separate specialized cadre managed by officials well trained in respective fields. These officials be given due status, designation and appropriate perks and facilities so that State may attract deserving, talented and meritorious persons, willing to work with all sincerity in respective wings. Both these wings be separately headed by independent officers of the level of Director General so that one wing may not get influenced by another.

(ii) The prosecution wing after separation, should be headed by an Officer of Secretary level, taken on deputation from Higher Judicial Services, so that it may function independently and effectively.

(iii) Whether sanctioned strength of police for maintaining law and order and normal police functions including prevention of crime, investigation and prosecution is sufficient? If not, what is actual requirement for the said purposes and why required number of posts were/are not created by Government so that problem of law and order in State is effectively managed?

(iv) What is actual number of sanctioned strength in the respective fields of Police Department and what is normal period of time taken for filling existing vacancies?

(v) Whether any existing qualification or specific eligibility conditions are prescribed for appointing Investigating Officer? If not, why such conditions should not be prescribed considering the fact that in these days, investigation process involves multifaceted scientific, technical and advanced techniques requiring an efficient and well conversant person to deal with all such

techniques etc.

(vi) How many cases are pending for investigation in the State, older than six months, and what is the actual number of Investigating Officers available. These figures shall be supplied in the form of a chart, district-wise.

(vii) Why Forensic Labs with modern equipments and sufficient staff be not established at every District Headquarters. State should also provide adequate staff looking to the size of District, general trend, number of criminal cases reported every year and nature of cases, normally reported in that area and maintain it regularly so that Investigating Officers may be able to get Forensic test/ opinion/ report with the utmost expeditiousness and as early as possible.

(viii) A report shall be submitted to this Court obtained from each and every Autopsy Centre as to what facilities are available thereat, how many Postmortem/ Autopsy they are conducting every day and show preservation of body organs etc. is being maintained. (The officers submitting report shall bear in mind that veracity of report, whatever is submitted, may got cross-checked by Court through Judicial Officers and, therefore, there should be no attempt to submit a casual and shallow report but it should be true and complete report in all respect.)

In case affidavits, as above, are not filed by date mentioned above, the two Officers namely, Principal Secretary (Home), U.P., Lucknow and Director General of Police, U.P., Lucknow shall appear before this Court on next date."

10. On a perusal of the aforesaid directions, we have no trace of doubt in our mind that the High Court in a case of

the present nature could not have issued such directions. In fact, as we perceive, some of the directions are in the field of exclusive domain of the Legislature. It is submitted by Mr. Ravi Prakash Mehrotra, learned counsel for the appellants that for giving effect to certain directions, provisions of the Indian Penal Code and the Code of Criminal Procedure are required to be amended. It is also urged by him that Union of India was not a party before the High Court and hence, directions could not have been thought of. He has also drawn our attention to certain State amendments.

11. Having noted the aforesaid submissions, it is necessary to state that it is expected that the High Courts while dealing with the *lis* are expected to focus on the process of adjudication and decide the matter. The concept, what is thought of or experienced cannot be ingrained or engrafted into an order solely because such a thought has struck the adjudicator. It must flow from the factual base and based on law. To elaborate, there cannot be general comments on the investigation or for that matter, issuance of host of directions for constituting separate specialized cadre managed by officials or to require an affidavit to be

filed whether sanctioned strength of police is adequate or not to maintain law and order or involvement of judicial officers or directions in the like manner. To say the least, some of the directions issued are not permissible and all of them are totally unrelated to the case before the High Court. We are constrained to say that the High Court should have been well advised to restrict the adjudicatory process that pertained to the controversy that was before it.

12. In this context, we may refer to refer certain authorities in the field. In ***Subrata Roy Sahara v. Union of India and others***[1] it has been held that a Judge is to decide every dispute, in consonance with law. One is not free to decide in consonance with his will, but must decide in accord with law. It has been further held that the concept of a Judge being an individual possessing power and authority, is but a delusion.

13. In ***Gurdev Kaur and others v. Kaki and others***[2] it has been observed thus:-

> "Judges must administer law according to the provisions of law. It is the bounden duty of judges to discern legislative intention in the

[1] (2014) 8 SCC 470
[2] (2007) 1 SCC 546

process of adjudication. Justice administered according to individual's whim, desire, inclination and notion of justice would lead to confusion, disorder and chaos."

14. In ***Census Commissioner and others v. R. Krishnamurthy***[3] the three-Judge Bench was compelled to observe as follows:-

"No adjudicator or a Judge can conceive the idea that the sky is the limit or for that matter there is no barrier or fetters in one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial zones. Be it ingeminated, refrain and restrain are the essential virtues in the arena of adjudication because they guard as sentinel so that virtuousness is constantly sustained. Not for nothing, centuries back Francis Bacon[4] had to say thus:

> "Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue. ... Let the Judges also remember that Solomon's throne was supported by lions on both sides: let them be lions, but yet lions under the throne."

15. In the said case, a passage from Frankfurter, J.[5] was reproduced which we think it apt to quote:-

"For the highest exercise of judicial duty is to subordinate one's private personal pulls and

[3] (2015) 2 SCC 796

[4] Bacon, "Essays: Of Judicature in I The Works of Francis Bacon" (Montague, Basil, Esq ed., Philadelphia: A Hart, late Carey & Hart, 1852), pp. 58-59.

[5] Frankfurter, Felix in Clark, Tom C., "Mr Justice Frankfurter: '*A Heritage for all Who Love the Law*'", 51 ABAJ 330, p. 332 (1965)

> one's private views to the law of which we are all guardians—those impersonal convictions that make a society a civilised community, and not the victims of personal rule."

16. We have referred to the aforesaid authorities to sound a note of caution as sometimes one comes across certain orders where directions are issued which do not directly arise from the case. In the instant case, as we notice, the controversy was absolutely different but the High Court has generalised it and issued the directions.

17. A Judge should not perceive a situation in a generalised manner. He ought not to wear a pair of spectacles so that he can see what he intends to see. There has to be a set of facts to express an opinion and that too, within the parameters of law.

18. In this regard, another aspect needs to be noted. We have already stated that some of the directions are in the nature of legislation or policy. In ***Union of India and another v. Deoki Nandan Aggarwal***[6] a three-Judge Bench has observed that the power to legislate has not been conferred on the courts and, therefore, the court cannot add words to a statute or read words into it which are not there.

[6] 1992 Supp (1) SCC 323

19. In ***Vemareddy Kumaraswamy Reddy and another v. State of A.P.***[7] the Court observed that the judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased.

20. In this context, we may fruitfully refer to the authority in ***Suresh Seth v. Commr., Indore Municipal Corporation and others***[8] wherein it has been held that the Court cannot issue any direction to the legislature to make any particular kind of enactment because under the constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In ***Supreme Court Employees' Welfare Association v. Union of India and another***[9] it has been ruled that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant

[7] (2006) 2 SCC 670
[8] (2005) 13 SCC 287
[9] (1989) 4 SCC 187

to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in ***State of Jammu & Kashmir v. A.R. Zakki and others***[10].

21. In this regard, the following passage from the authority in ***Manoj Sharma v. State***[11], would be relevant:-

> "The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in *Aravali Golf Club v. Chander Hass*[12] and *State of A.P. v. P. Laxmi Devi*[13] restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ."

22. In ***State of U.P.* v. *Mahindra and Mahindra Ltd.***[14], the Court observed:-

> "Within our Constitution, we have specifically demarcated the ambit of power and the boundaries of the three organs of the society by laying down the principles of separation of powers, which is being adhered to for carrying out democratic functioning of the country. So far as the legislation is concerned, the exclusive domain is with the legislature. Subordinate legislations are framed by the executive by exercising the delegated

[10] 1992 Supp (1) SCC 548
[11] (2008) 16 SCC 1
[12] (2008) 1 SCC 683
[13] (2008) 4 SCC 720
[14] (2011) 13 SCC 77

> power conferred by the statute, which is the rule-making power. The judiciary has been vested with the power to interpret the aforesaid legislations and to give effect to them since the parameters of the jurisdiction of both the organs are earmarked. Therefore, it is always appropriate for each of the organs to function within its domain."

23. Some of the directions, as we perceive, are in the sphere of policy. A court cannot take steps for framing a policy. As is evincible, the directions issued by the High Court and the queries made by it related to various spheres which, we are constrained to think, the High Court should not have gone into. It had a very limited *lis* before it. Be it stated, the directions may definitely show some anxiety on the part of the learned Judges, but it is to be remembered that directions are not issued solely out of concern. They have to be founded on certain legally justifiable principles that have roots in the laws of the country. In this regard, we may fruitfully refer to the following passage from ***State of Uttar Pradesh and others v. Anil Kumar Sharma and another***[15]:-

> "17. Quoting the observations in respect of policy-making by Lawton, L.J. in *Laker Airways*[16] A.S.

[15] (2015) 6 SCC 716

[16] *Laker Airways Ltd. v. Deptt. of Trade*, 1977 QB 643 : (1977) 2 WLR 234 : (1977) 2 All ER 182 (CA)

> Anand, C.J., as he then was, reiterated the principle that the "role of the Judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play". Anand, C.J. added:
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> > "The judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that court cannot run the Government. It has the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation."

24. Be it noted, the said case also arose from the High Court of Allahabad where sweeping directions were issued. Thus anlaysed, we are of the convinced opinion that the High Court has crossed the boundaries of the controversy that was before it. The courts are required to exercise the power of judicial review regard being had to the controversy before it. There may be a laudable object in the mind but it must flow from the facts before it or there has to be a specific litigation before it. Additionally, the High Court should have reminded itself that it cannot enter into the domain where amendment to legislations and other regulations are necessary. We are absolutely conscious that it is the duty of the State Government to discharge its obligations in the

matters relating to law and order and remain alert to the issues that emerge. It has a duty also to see that the investigations are speedily completed in an appropriate manner. If there is a failure of law and order situation, the executive is to be blamed. In the maintenance of law and order situation the judicial officers are not to be involved. But the executive has to remain absolutely alive to its duties and we are sure, the State Government shall look into the aspects and endeavour to see that appropriate steps are taken to maintain the law and order situation.

25. A few words by way of clarification. Though we have not appreciated the opinion expressed and the directions issued by the High Court as the opinions are general in nature and directions fall in the legislative domain and some of them are beyond the scope of the litigation, yet we have observed certain aspects in the preceding paragraph. Our observations made hereinabove are words of caution for the State and we are sure that the State shall remain alive to its obligations.

26. Resultantly, the appeal is allowed and the impugned order passed by the High Court is set aside. The High Court

is requested to fix a fresh date and dispose of the writ petition in accordance with law.

.....J.
(Dipak Misra)

.....J.
(Amitava Roy)

New Delhi;
November 29, 2016