

ROMILA THAPAR & ORS. v. UNION OF INDIA & ORS.

[Verdict on Bhima Koregaon Arrest]

FACTS

A writ petition was filed before Supreme Court under Article 32, on 28th August, 2018 by five eminent persons who were famous human rights activists, journalists, advocates and political workers. Namely: Romila Thapar, Maja Dharuwala, Satish Deshpande, Prabhat Patnaik and Devaki Jain.

The petition challenged the arrest of five human rights activists namely, Gautam Navlakha, Sudha Bharadwaj, Vernon Gonzalves, Arun Ferreira and Varavara Rao for supposedly having involvement with the violence of Bhima Koregaon as it was triggered by the Elgaar Parishad in January 2018. Gautam Navalakha was a Human Rights activist and journalist New Delhi. Sudha Bharadwaj was an Advocate who was practicing at Bilaspur High Court who resides at Faridabad. Varavara Rao was based in Hyderabad who was a known political worker, commentator and renowned poet. Arun Ferreira who was from Mumbai, he was a practising lawyer and a Human Rights activist. Vernon Gonsalves who resided in Mumbai, he was Gold medallist from Bombay University in Commerce, accounts officer at Siemens, later on became a lecturer of accounts in Maharashtra College, he also was a writer and columnist.

The Maharashtra Police simultaneously raided in various parts of the country and arresting of five activists in such raid which resulted in filing the petition. The charge of abetting the terror acts under the Unlawful Activities (Prevention) Act was awarded to the activists when they were arrested.

As the arrest was made in an arbitrary manner it was challenged and it also violated the freedom of speech (Article 19), equality before law (Article 14), personal liberty (Article 21) and voice of dissent. The police claims were that the 5 accused activists who were arrested, organised and funded the Elgar Parishad in June which led to the violence at Koregaon.

The petitioners clearly stated in their petition that they were concerned in all seriousness about the erosion of democratic values and were humbly approaching the Court to ensure

independent and credible “investigation into the arrest of stated five human rights activists” and “not to stop investigation into allegations.”

The petitioners claimed that this action by the police was taken to stop the activists from helping the poor and needy, to create a fear in the minds of the people, to divert the people's attention from real issues and to restrict the dissent. The freedom of expression and independence of the activists were attacked by the allegation. The petitioners had claimed that on 31st December, 2017 none of the five activists who were arrested in connection with the stated FIR was present during the event organized at Pune by “Elgar Parishad” nor any allegation is found against them in the FIR and further stated that the accused persons had no concern with the said event.

Similar arbitrary arrests according to the petitioners were made by the Pune City Police were caused across the country, especially who spoke in favour of the poor and marginalized. Also they stated that such arrests were made to malign human rights defenders, lawyers, activists and the progressive ideas and human rights ideology so as to dissuade these people from criticizing the Government policies and programmes.

Maharashtra police asserted their reason for arrest to be that the activists had connection with the Communist Party of India (Maoist) which is a banned organisation within the Unlawful Activities (Prevention) Act

In this case the petitioner requested the court to constitute the Special Investigation team to conduct the autonomous and independent investigation.

In the petition, the petitioners prayed for the formation for a Special Investigation Team (SIT) for ensuring independent investigation into the enquiry of the matter.

ISSUE

There are three main issues in the case. They were:

Whether the Maharashtra Police was arbitrary and had mala fide intentions while arresting the activists?

Whether the rights mentioned under Article 14, 19, 21 of the Constitution were violated by the arrest?; and

Whether the plea for the Special Investigation Team (SIT)'s investigation will be permitted?

RULE

Article 14 of the constitution states that within the territory of India the state cannot deny any person equality before the law or the equal protection of the laws.

Article 19 of the constitution states that one can express their opinion freely without any fear through the mediums of oral, written, electronic, broadcasting, press.

Article 21 of the constitution states that no one will be deprived of their life or personal liberty except when there is a procedure established by law.

An arbitrary act is an act which is not based on any [principle](#), [plan](#), rule or system, thus it feels unfair and done with a mala fide intention.

SIT is a specialized team of officers which is formed when the existing investigative agencies are not perceived to be able to conduct a proper investigation.

ANALYSIS

The Court delivered its judgment on 28th September, 2018. The Maharashtra Police's investigation was allowed to continued by a majority of 2:1.

[Justice Khanwilkar's opinion](#) on behalf of (then) Chief Justice of India, Misra and himself

[Justice Chandrachud's dissenting opinion](#)

The Petitioners argued that a last resort option was made use of by arresting as only when it is absolutely necessary to conduct an investigation without hindrance it must be done and arresting limits the right to liberty of the detainees, they are meant to be used as. The activists of the present case had known to have strong community roots and do not pose a flight risk, thus their prolonged arrest violates their fundamental right to life and liberty under [Article 21](#) as there wasn't any any proof of their connection to the Koregaon violence. In the conduct of the investigation and arrests are arbitrary and violative of the rule of law the petitioners also argue that there were procedural lapses which leads on to be a violation of the activists' rights under [Article 14](#). Finally, the petitioners also claimed this case is driven by mala fide intent which is indicated by the use of the UAPA to arrest a group of activists whose political opinions the government disagrees. Thus, adverse effects can be found the right to free speech and expression of the activists which are given under [Article 19](#) of the constitution. India's obligations as a signatory of the [International Covenant of Civil and Political Rights](#) [can be violated by such harsh and unfair consequences for expressing dissent also](#)

[violate](#). Here, the Respondent argued that on the basis of evidence found against the activists the arrest was made. The contention that the arrest was made without appropriate evidence was disagreed upon by the majority of the court as authorities had produced sufficient and satisfactory evidences.

In an argument the petitioners stated that on 31st December, 2017 at Pune the five activists were not present in the event organized by “Elgar Parishad”. No allegations were further found against them in the FIR. Under various provisions of the Unlawful Activities (Prevention) Act, 1967 (“UAPA”), the arrests made by the Maharashtra Police was baseless and was made to curb dissent. The respondents argued that five arrested activists as they supposedly had connections with a banned terrorist Organization Communist Party of India (Maoist) which is under Unlawful Activities Prevention Act. The respondent further contended that the petitioners cannot challenge the arrest of five activists and the arrest by Maharashtra Police was not arbitrary. the majority of the court stated that the petitioners had failed to establish investigating officers’ intention to curb political dissent while making the arrests because there were no specific and relevant material facts which can prove that the investigating officers had exercised mala fide powers and held that the accused were arrested for their involvement in the Elgaar Parishad meeting & not merely because of their dissenting views. Whereas the dissenting view in present case was held to be that there is sufficient doubt in relation to the impartiality of the Maharashtra Police.

In the arrest of five human rights activists, a request was constituted for a Special Investigating Team was received by the court by the petitioners in ensuring the independent, credible and autonomous investigation.

On 28th September 2018 the Majority Decision of the court for the case of five arrested human rights activists rejected the plea for conducting the enquiry through the Special Investigation Team (SIT) instead of Maharashtra police. By referring the case of Narmada Bai v. State of Gujrat and Ors. & Sanjiv Rajendra Bhatt Vs. Union of India, the rejection was made where the court had asserted that the parties to the case according to their own personal choice and preference cannot choose the investigation agencies. Whereas in the dissenting opinion given by Justice Chandrachud emphasised that though in the case of Narmada Bai v. State of Gujrat and Ors, it was held that the accused cannot choose investigative agencies but in that case the Gujarat Police was removed from the investigation because they made serious procedural lapses during investigation. Investigation by the Special Investigating Team

(SIT) is needed which should be monitored by the court. That the court should be vigilant to protect the liberty of the those who take up unpopular causes was also stated by him.

CONCLUSION

The plea was rejected by the Supreme Court in a 2:1 majority judgment for an independent enquiry by Special Investigation Team (SIT) on the ground that there was sufficient evidence for the possibility that under Unlawful Activities Prevention Act (UAPA) they had connections of a banned terrorist organization that is Communist Party of India (Maoist). From the majority decision it was clear that that arrest made by Maharashtra Police was not with a mala fide intention and arbitrary in nature and it did not infringe any of the said fundamental rights of the arrested five activists. But according to DY Chandrachud, who was the lone dissenting judge, as he had doubt regarding the impartiality and intentions of the Maharashtra Police the need for calling a Special Investigating Team (SIT) was required which would be monitored by the court if formed. One is forced by the majority decision when it clashes with the State to re-examine the delicate nature of protection in relation to the freedom of speech and expression. Any views which were in relation to the guilt or innocence of accused was not expressed by the Apex Court. The statement was provided by the court that the judicial proceedings were pending before lower court which was appropriated that can be pursued in accordance with the law by the parties. Liberty to continue their requests were granted to the accused for modified relief before an appropriate court. The investigating officer was further free for proceeding in conformity with the law against the accused persons. The court directed the interim order dated 29.08.2018, in addition to the previously mentioned necessities, which placed accused persons under the house arrest for the four weeks so that the activists can plead for bail in the lower courts. The bail plea was rejected by the Pune Trial Court and the house arrest was extended by the Hyderabad High Court. Remedies were available to the accused at various stages of investigation. This was held by the Apex Court. The Court rejected the petition and gave the power to the investigating officer to take actions according to the law.