

Mr
I.H. Saiyed
FC
(O.A.No.294 of 2011 - Ahmedabad Bench)

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No. 294 of 2011

with

Misc. Application No. 369 of 2015

This, the 22nd day of January, 2016

FREE COPY U/R 22 OF
C.A.T. (PROCEDURE) RULES.

CORAM.

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI K.N. SHRIVASTAVA, ADMINISTRATIVE MEMBER

Rahul Sharma, IPS,
Bungalow No.5,
Race Course Ring Road,
Opposite Fun World,
Rajkot - 360 001

...

Applicant.

(By Advocate : Mr. I.H. Saiyed)

versus

1. State of Gujarat
(Notice to be served through
The Chief Secretary,
Government of Gujarat,
Block No.1, Third Floor, Sachivalaya,
GANDHINAGAR : 382 010

2. Dr. Varesh Sinha, IAS,
The Additional Chief Secretary,
Home Department, Government of Gujarat,
Block No.2, First Floor Sachivalaya,
GANDHINAGAR : 382 010

3. Shri Narendra D. Modi,
Chief Minister of Gujarat,
Block No.1, Sachivalaya,
GANDHINAGAR : 382 010

...

Respondents.

(By Advocate : Mr. Bhaskar P. Tanna (Senior), M/s. Tanna Associates)



ORDER

PER HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

The conflagration on 27.2.2002 at Godhra when Sabarmati express was engulfed in flames which led to many people to loose their lives and subsequently large scale communal riot broke out, that rocked Ahmedabad which spread to different parts of Gujarat after 28.02.2002. The fundamental premise of this judicial determination will be as in **E.P. Royappa vs. State of Tamil Nadu** reported in AIR 1974 SC 555 wherein the Hon'ble Apex Court held "equality and arbitrariness are sworn enemies. One belong to rule of law and other to the whims and caprice of an absolute Monarch".

2. Being a very sensitive case in which the then Chief Minister was made a party respondent and in view of the national importance the original issue stipulated at that time and the issue canvassed at this point of time was, as several hundreds had lost their life in the communal riots and what that followed was that the probity and integrity of national realm was seriously endangered. Thus being the situation, the case was handled by the Tribunal very sensitively and an interim order was passed on 03.04.2012 only after affording an effective opportunity of being heard to both the parties. Subsequently, it was made out that in 2011, the 3rd respondent had initiated necessary



proceedings. So, what then is the constitutional responsibility of governance system in the light of the challenge to Annexure A-1 charge sheet? It will be quite appropriate to determine that the fundamental rights enshrined in the Constitution of India, must therefore be read along with Article 51 (A)(i) which says "to safeguard public property and to abjure violence". The Hon'ble Apex Court in **Mumbai Kamgar Sabha vs. Abdul Bhai** reported in AIR 1976 SC 1455 held that these are tools to determine constitutional province and premise. Therefore, the fundamental issue would be (1) the responsibility of the applicant as a citizen; (2) the responsibility of the applicant as a Policeman and then only (3) the responsibility of the applicant as a subordinate Government servant.

3. The State of Gujarat had then taken up this interim order in challenge on the ground that it is practically a final order which should not have been passed at all. Apparently, it is submitted that an ethical bias seems to have been canvassed in that interim order, but ***bias in the sense of conviction in moral and ethical values is not only unavoidable during judicial determination but also desirable*** as otherwise the blood that made red the streets and by lanes of Gujarat would have gone in vain.



4. As stated, the matter was taken up before the Hon'ble High Court of Gujarat in Special Civil Application No. 8980 of 2012 wherein it was canvassed that the relief granted by the Tribunal is practically a final order which ought not to have been granted even by way of a final order. But after hearing both the learned counsel the Hon'ble High Court held in paragraph 5 of the judgement that **"... it appears to be unnecessary and unjustifiable to interfere with the impugned order. Since the learned counsel appearing on both sides submitted and agreed that the main original application may be heard and disposed off on merits, without being influenced by the observations made in the impugned order or disposal of the present petition as early as practicable and preferably within a period of three months...."**

5. Following the direction of the Hon'ble High Court of Gujarat, the matter was posted to 16.01.2013 when on completion of process it was heard and posted for final hearing on 13.02.2013 and on that day it was again adjourned to 14.03.2013 on request of the learned counsel for respondents. Thereafter, on 14.03.2013, the matter was adjourned to 30.4.2013 as prayed for by the applicant. As there was no Division Bench on 30.04.2013, the matter was adjourned to 02.07.2013 and then to 07.08.2013 and then to 3.10.2013 and on 3.10.2013 as the



counsel for the applicant was unwell, matter was adjourned to 18.11.2013 on which day, due to the demise of Adv. Shri S.N. Sinha, the matter was adjourned to 16.12.2013. Thereafter, due to non availability of Division Bench, the matter was delisted on 5 occasions and on submission of Ms. Kerawala on 08.05.2014, it was adjourned to 26.06.2014 and on that day, it was listed for 14.07.2014. On that day, none was present on behalf of the parties and it was adjourned to 01.08.2014. Matter was again listed for 04.08.2014 and on that day, the matter stood adjourned and thereafter on 6.8.14, it was posted for 10.9.2014 for production of a file and on 13.10.2014, on the joint request made by the parties, it was posted on 16.10.2014 and then to 17.10.2014 and then to 13.11.2014. Thereafter, it was listed twice and adjourned to 08.12.2014 and then to 09.12.2014 and the hearing was postponed to 12.12.2014 and then posted to 07.01.2015 and then posted to 5.2.2015 and then to 13.2.2015, when none were present. On 12.6.2015, the applicant pressed for hearing, but Ms. Kerawala had sent a sick note, but a specific order was issued whether or not the counsel was present, the matter would be proceeded with and posted to 24.7.2015. On 24.07.2015, none appears for respondents, but the Govt. representative, in the absence of the counsel, requested for accommodation. Shri Rahul Sharma pressed for hearing. But to give an opportunity to the respondents, the matter was adjourned to 04.08.2015



On 4.8.2015, the applicant filed a leave note and in view of the submission of the respondents, it was adjourned to 28.08.2015. It was then taken on 7.10.15, but as the learned counsel for the respondents had some physical disability, the matter was listed on 14.10.2015. On 14.10.2015, the applicant and respondents were heard for some time. And the matter was posted for 03.11.15. On 03.11.2015, the applicant was present. But since Shri Bhaskar P. Tanna could not reach, the matter was adjourned to 06.11.2015. As there was no DB on that day, the matter was adjourned to 27.11.2015. When the matter was posted on 27.11.2015, the matter stood adjourned to 03.12.2015. These lengthy information had to be presented as the Hon'ble High Court of Gujarat had granted a time frame of three months within which the matter should have been disposed as stated above. But for reasons stated above, it could not be done.

6. Even though both sides offers cooperation, the matter for some reason or the other remained pending and in the meanwhile, an amendment application was filed by the counsel for the applicant to which the learned counsel for the respondents have serious objection and claim that if the application is allowed, there will be an overturning effect of pleading and therefore, cannot be permitted to be brought in. Even though the general rule which is canvassed generally is under



order 6 - Rule 17 of the CPC which canvasses that unless serious prejudice could be caused to the opposite side, if an amendment is allowed, for eg. because of efflux of time if the amendment is set back, the effect of limitation set in would be negated or such issues arise, amendments are usually to be allowed. But the question then would be, what would be the effect if the amendment is not allowed, whether it will cause substantial grievance to the applicant in view of the allegation against him, will be the question. The applicant has also filed an application for production of files relating to the incidents. But then we feel that for resolving the current issue, none of these issues are relevant and there is no need to go fishing farther afield. This is more significant as reliefs under Article 226 are not governed by parameters of pleadings alone and the adjudicator, naturally has to look into issues of greater public interest.

7. But then the question is if interim applications are to be entertained whether it would defeat the purport and purpose of the Hon'ble High Court order which remains unfulfilled even after three years of the order. We do not want to go into nitty gritty of who was at fault, but proceed to determine the entire matter in issue.

8. The crucial element of the issue seems to be the letter Annexure A-3 which we will now reproduce as under :



CONFIDENTIAL

IMMEDIATE

No. ACP(Crime)/101/2002
Office of the Asst. Commr. of Police
Crime Branch, Ahmedabad City

May 8, 2002

To:
The Chief Executive Officer,
AT & T,
Gandhinagar

Sub: Request to provide information about mobile phones in connection with investigations of Naroda Police Station CR No. I 193/2002.

Sir,

I shall be thankful to you if the following information is provided to us in connection with the investigations of the above mentioned case. The information may be supplied to the undersigned in some storage device (CD-ROM, Hard Disk etc.). Information under the following fields would be required :

1. Serial No.
2. Call type (Incoming or Outgoing)
3. Number of the mobile phone which is making the call and the mobile phone which is receiving the call; whether the phone (caller or receiver) is using a pre-paid or a post-paid SIM Card?
4. Call duration
5. Date
6. Time
7. POI (for both the caller and the called)
8. Area (If it is possible to get the sector from which the call is received and from which the call is made, please give the sector information also)
9. Cell (for both the caller and the called)
10. IMEI number of the instrument of both the caller and the called

The above information is required for all phone calls made from or received in Ahmedabad City from 0000 hours of 25th February, 2002 to 2400 hrs of 4th March, 2002. The information is required for both pre-paid or post-paid SIM Cards.

It is also requested to provide the names and addresses of every subscriber of your mobile phone (both pre-paid and post-paid) in the electronic format.

Thanking you,

Yours sincerely,

Sd/- Illegible

(S.S.Chudasama)



9. The same letter had been issued to both service providers by Shri S.S. Chudasama Assistant Commissioner of Police, who had issued the letter to the service providers of mobile phones in Ahmedabad City. In the normal nature of Police investigation and apparently in the climate of discussions that were held and since it is Naroda Police Station Crime -- I 193/2002 and not being the Station House Officer, it will be pertinent to assume that this letter must be the culmination of collective decision since according to Shri P.P.Pandey, the then Joint Commissioner of Police more than 50 such cases were with them and, therefore, issued as a part of progress of investigation in one way or the other. Therefore, it would be correct to assume that it would have occurred to the investigating officers and the supervising officers that securing of the call details of the telephone numbers would have an effect on the investigation, if correctly pursued. That being so, the matter would not have rested there itself without being pursued later also and in this connection, the statement of Shri P.P. Pandey is very significant as he had raised a divergent note to the effect that the CD was not handed over to him by Shri Rahul Sharma.

“Aswa thama Hatha”



is the word which comes to our mind and nowhere in these records we could find that the applicant had personally handed over the CDs to Mr P.P. Pandey. The case is that it had been handed over to Shri Surolia and the rider then handed over the original CDs to Shri P.P. Pandey. It appears that more than one copies of CDs are available at that point of time.

10. But the crucial issue is that Shri S.S. Chudasama had called for the CDs and having not obtained it, normally, he will take umbrage at the service providers and they would have provided a duplicate immediately as it is fully in their power to do so or if they had refused to do so the files would have indicated thus, and appropriate direction under Indian Telegraphs Act could have been issued to them. Therefore, going by the *best evidence* theory of Indian Evidence Act, reason and logic would stipulate that the concerned CDs would have been in the possession of Shri SS Chudasama in the days following Annexure A-3 requisition within a reasonable time. Had it not been so, without any doubt, this crucial issue would have been agitated long back by him or any of the investigating officers.

11. As apparently the case of both the parties is that the call details would be a crucial evidence in unearthing a conspiracy, if there one was



Since the importance of the documents is in the knowledge of every one concerned and as Shri P.P. Pandey himself has stated that "according to their ability all the senior officers had contributed in the discussion", then the question of non-availability of the call details would have been a crucial issue during the discussion as there cannot be any other way to ignore the significance of the professional method of investigation instilled into every policeman from Constable upto the DGP. Therefore, logic would suggest that if the call details were called for and if not found available, then only two elements of consideration would arise.

- (i) *The call details were examined and found to be of insignificance - but then the CD will speak loudly and voluminously on the call details as the names and addresses of such persons who spoke during the interregnum period from 25.2.2002 and 4.3.2002 and analysis of it and the decision to discard it would be so voluminous that it cannot be hidden.*
- (ii) *If such CDs had been in their possession and for some reason found it necessary to discard it, the whole issue may be wiped off.*

But then, for whatever reasons, the applicant had apparently chosen to analyse the details for himself in his personal computer, probably because he had nothing much else to do after his recall from Bhavnagar, following the difference of opinion he had about the suppression of the riots by him and it remained in his possession in his hard disk to later emerge again when he was called to be cross examined by the Justice Nanawati Commission.



12. In Annexure A-40, which is the statement given by Shri P.P. Pandey, the IG Police, the elements are this :

- i) Generally the investigations of crime are done by the PSIs and PIs which is supervised by the ACP.
- ii) He joined Crime Branch as JCP on 17.05.2002 and which were being investigated by ACP and by the different PIs Incharge. *There were more than 50 cases* and, therefore, several teams were investigating these cases.
- iii) After this, Shri Kaushik, the Commissioner of Police, issued a letter dated 28.5.2002 ordering Shri Rahul Sharma to supervise these crimes.
- iv) Around 2004, it came to be known through the news paper that the CDs containing datas of the mobile phones had been called from the mobile phone companies in connection with this and he instructed Shri G.L. Singhal to get information in this regard.
- v) Shri Rahul sharma did not give him any CD. Because if any CD is to be given, then it is to be given to the I.O.
- vi) *In paragraph 9 of Annexue A-40 Shri Pandey would say " the then Police Commissioner Shri Kaushik had informed me orally that Rahul Sharma is doing the analysis of the electronic data because he is an expert in computer.*

13. The cumulative effect of this statement of Shri Pandey is that he has adopted the "**Aswa thama Hatha**" attitude. He knew that Shri Rahul Sharma is an expert in computer and Shri Kaushik, the then commissioner of police, who had issued the written order on 28.05.2002 had orally informed him that Rahul Sharma is doing the analysis of electronic data because he is an expert in computer. Unless Shri Rahul Sharma had the possession of the CDs to the knowledge of Shri



Kaushik, some time prior, there was no occasion for Shri Kaushik to say. reasonably and logically "*Rahul Sharma is doing the analysis of electronic data because he is an expert in computer.*" Therefore, at least at that point of time, Shri Pandey became aware that Shri Rahul Sharma had the CDs with him and was doing the analysis of electronic data. Therefore, it is now crystal clear that these elements were all available at the pertinent time :

- 1) That the call details were considered as significant and pertinent so as to call for the issue of Annexure A-3 letter dated 8.5.2002;
- 2) During these period there were supervisory meetings (the details of which are not available);
- 3) At least in 2004, Shri Pandey has become aware and became incensed about it. he was compelled to issue a direction to Shri G.L. Singhal to look into it. (What came out of this instructions is not known). Since there were supervisory meetings and writer of the Annexure A-3 letter, Shri S.S. Chudasama, was also attending the supervisory meeting ^{and} since there were more than 50 cases with them which will involve several police teams, it is crystal positive that the significance of the call details being made available, would and could, we felt needed at some point of investigations by any of these teams. Because, conspiracy was alleged from the very beginning and the incident of 27.2.2002, 28.2.2002 and subsequent dates upto possible 15.3.2002 were allegedly inter-connected. It could not have escaped the notice of at least one of the investigating officers that getting the call details would pave way for progressing investigation as geographical presence of each accused could then be formatted.



4) Unless they were told to concentrate on other spheres of action, given the discipline in the police force, they would have been compelled to accede to a direction to forget the whole thing.

14. **Shri S.S. Chudasama having understood the significance of the call details and having called for it, would have had innumerable opportunities of recalling Annexure A-3 letter as he had to supervise more than 50 cases in which he would be in discussion with several IOs and the question of cross verification with several investigating officers, amongst several accused at crucial events would have cropped up innumerable times as they were grasping with the situation of finding evidence. The establishment of geographical presence of accused at crucial events was therefore available through mobile datas and reasonably intelligent investigating officers cannot be held to be unaware of this. That being so, the further inaction of Shri S.S. Chudasama following Annexure-3 cries out in silent horror.**

15. The State of Gujarat in their reply focus their attention on Section 6 of the Commissions of Inquiry Act which protects only a statement which is made in reply to a question which is required by the Commission to answer or is relevant to the subject matter of enquiry proffers a distinction. The Section 6 covers only statement and not



document is their case. Therefore, they say that the applicant could have excluded the CD's in his cross examination. But then it will be perjury.

16. This arose as to whether a person can take protection under Article 20, sub clause 3, and submit that there is a good deal of difference between spoken word and written word as the applicant is not an accused, such protection cannot be made available to him. They further took a view that in the examination of Examination in Chief of the applicant that, he, as a government witness was required to narrate only incidents which took place in Bhavnagar District and in cross examination of witness by Mr. Mukul Sinha, the applicant has volunteered to produce two CDs and therefore, these two digital documents were not produced in answer to the cross examinations. Therefore, on these grounds, the State relied on the questions and answers which are reproduced as under:

"Q.2 On 30.10.2004, you did not say anything with respect to the CDs but you produced them only when you were being cross-examined. Why it so happened

A. When I was examined by the Commission, I thought that my examination-in- chief was confined to what I had stated in my affidavit and that was for the period from 27.02.2002 to 30.04.2002. I did not produce the CDs on my own because the occasion did not arise.

Q.3 Why you had brought the CDs on that day ?



A. I anticipated that some questions regarding the extended terms of reference may be put to me and, therefore I had brought those CDs with me. I also anticipated that I may be put some questions in view of what Mr. P.P. Pande had stated earlier in his deposition before the Commission.

Q.4 If you came to know about the extended terms of reference and also the importance of the CDs and the answers given by Mr. Pande earlier, why did you not file an affidavit?

A. I did not think it necessary to file an additional affidavit in respect of the CDs as it was not mandatory for me to do so and there was also no emphasis from the department in this behalf.

Q.13 In your deposition you have stated you have prepared one copy but we now understand that you have produced one copy before Justice Banerjee Committee also. If you have prepared only one copy how is that the other copy came to be produced by you before that Committee?

A. As I have stated earlier, the CD that had been prepared contained zipped data provided by the Mobile Phone Companies. The master CD was with me and still with me. On 30.10.2004, I had produced two copies of the CD before the Hon'ble Commission. I was directed by the High Level Committee (Banerjee Committee) to appear before it on 22.11.2004 along with all necessary papers/documents including relevant material, photographs etc. This direction was sent to me through the Director, CBI, New Delhi. On receiving permission for the same, I had remained present before the Committee with a copy of the same CD, which was in my possession.

Q.14 In reply to the communication which you had received from the High Level Committee, did you inform the High Level Committee that you were in no way concerned with the Godhra incident and, therefore, you are not in possession of material which could have thrown light as regards what had happened at Godhra?

A. I was not asked, to the best of my knowledge, and I did not inform the Committee about the same.

Q.15 Since the CD which you have prepared had no bearing with Godhra incident, why did you produce the same before the High Level Committee?

A. There are two issues :

i. I was asked by the Committee to provide it.



2. Since I have not analysed the data, I cannot say that the CD has no bearing upon the Godhra incident. At that time, during the investigation of the Godhra train carnage, a conspiracy theory had been proposed. From my experience as a police officer, I can say that it would be very surprising if a conspiracy of this magnitude had been hatched without any links to Ahmedabad.

Q 17. When you went to Delhi for giving your statement before the High Level Committee, you had carried the CD with you even though you were not specifically asked to carry the same?

A. Yes, I was carrying the CD along with other documents.

17. The State would thus claim that the applicant was inclined to produce the CDs on his own. They would also say that the CDs were not treated as relevant but held that the data which would be required by the Commission would be confined to telephone numbers contained in exhibit 5934 - this is apparently so according to paragraph 12 of the reply and Annexure 39 but for the reason that Shri Rahul Sharma has not produced the original CDs - the case of Shri Rahul Sharma being that he had handed over it to Shri Pandey and Shri Surolia the copy.

18. Adverting to the second limb of the proviso, the State of Gujarat would advance a case that the Commission did not consider the data supplied by Shri Rahul Sharma as relevant to the subject matter of enquiry. It is now reproduced hereunder:

"The fact remains that the original CDs which according to Shri Rahul Sharma were obtained from the mobile service providers - Celforce and AT&T - which were given to him for analysis are



not available. The Commission is of the view that the controversial issue as to who had decided to call for such data and how the original CDs were dealt with, can be decided later on after conducting an enquiry in that behalf, if found necessary. It is really a matter of appreciation of the material made available to the Commission. For the present, it would be sufficient to direct the two mobile service providers to make available to the Commission the data which was called for by Shri Rahul Sharma."

But then, there seems a mistake which has crept in the Commission Report as the direction to the mobile service providers was issued by Shri S.S. Chudasama and not by Rahul Sharma. But the 43 telephone numbers culled out from the CD formed part of Commission proceeding and therefore, became subject matter of the enquiry, asserts the applicant thereby satisfying the 2nd proviso to Section 6 of the Commissions of Inquiry Act.

19. Pointing out the alleged contradiction of the applicant with reference to the CDs, the State points out that in paragraph 4.9 at page No. 8 of the paper book, it is stated in line 9 as under :

"The applicant, therefore, told him that since more than two months had gone by since the riots first started, it would be advisable to collect scientific evidence in respect of the riot-related crimes. At that time, the applicant and Shri Surolla had this information/intelligence that mobile phones had been used in a big way by the accused persons to direct the riotous mob from one place to another. At that time, only two mobile phone service providers were operational in Gujarat - M/s. Celforce (which is now Vodafone) and M/s. AT&T (which is now Idea Cellular)."



20. The State points out that in paragraph No.4.12 at page No.10 of the paper book, it is stated in line 6 as under :

"The applicant, therefore, took the CD home and copied the data on to the hard disk of his personal computer kept at his home. It is submitted that it was necessary to have a combined analysis of the data that was to be provided by both the mobile phone companies. This necessitated the copying of all data received from the two mobile phone companies onto the hard disk of a computer. After copying the data on to the hard disk of his personal computer, the applicant returned the CD to Shri Surolia in his office in the Crime Branch. He also informed Shri Surolia of the constraints of analyzing the data of only AT&T. The data provided by AT&T was in Comma Separated Value (CSV) format and MS Access format."

Then the reply states that this goes to show that the applicant kept data on to the hard disk of his personal computer at home. It further states that he has returned the CDs to Shri Surolia in his office in Crime Branch. The State thus questions the veracity of this statement and contend that if the said CD has been returned to Shri Surolia then how can it be produced before the Commission. The applicant submits, quite obviously, it was in his hard disk. In fact, the Hon'ble Apex Court in **U.P. State Co-Operative Development Bank Limited vs. Chandra Bhan Dubey** reported in 1999 (1) SCC 641 at page 758 held, **"..When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, or body of individuals.."** He would



say that all acts of his was in pursuance of truth and the need of a policeman to protect his fellow man which is his duty.

21. The State submits that in para 4.26 at page No.21 and in Para 4.27 at page No. 21 & 22 of the paper book, it is stated as under :

“The applicant then asked Shri Chandana to give him back the CDs. He then called a messenger (called “riders”) from the control room, handed him over the CDs in an envelope and instructed him to hand over the CDs to Shri P.P. Pandey. The messenger went over to the office of the Crime Branch in Dafnala and handed over the CDs personally to Shri P.P. Pandey. He then came back and reported to the applicant that the CDs had been given to Shri P.P. Pandey personally.”

“The applicant submits that after the CDs were handed over to Shri P.P. Pandey and while the applicant, though transferred but had not yet been relieved and was still holding the charge of DCP, Control Room, Shri P.P. Pandey, while coming down from the main stair case connecting the first floor to the ground floor of the Office of the Commissioner of Police, met the applicant as he was entering his office of the DCP, Control Room, on the ground floor. Shri Pandey expressed surprise that the applicant had been transferred. At that time, the applicant enquired with him about the receipt of the CDs and he confirmed the receipt of the same to the applicant. At that time, the applicant also advised Shri P.P. Pandey to keep the original CDs safely along with the case papers.”

The State would comment on paragraph 4.26 and would say that if the messenger had given the CDs in an envelope to Shri P.P. Pandey then how can he hand over the CDs to Shri Surolia later on. They would also point to para 4.27 and would say that this is contrary to the statements made by Shri Pandey and others. The applicant would claim



that the test of truth is not in its numbers but in the stream of probability, which we think is established by our earlier discussion. In **Common Cause, A Registered Society vs. Union of India** reported in AIR 1997 SC 1203, the Hon'ble Apex Court held that "when a public servant whose actions are arbitrary, malafide and discriminatory, it is wholly illegal and even exemplary damages are to be allowed."

22. The State would comment on Annexures A-13 and A-15, which are reproduced as under:

"Since those CDs were really a part of information received during the investigation , I had requested Mr. Pandey to keep the original CDs along with the case file. I had prepared one copy of the information and that has remained with me."

"Regarding the original CDs, they were returned to Shri P.P. Pandey, the Joint Commissioner, Crime Branch, Ahmedabad City."

Therefore, the State would say that these statements are contradictory. But it appears that if it is kept in hard disk, then it is more clearly possible. To this, the State would contend that though there was departmental internal enquiry and findings and which had concluded that the CDs and the information contained in it is of no relevance at all. It is in this light, the State submitted and illuminated at Annexure A-37 where they said that ***" The state hereby submit in clear terms that the said CDs and the data in question had never been disclosed to***



the State in any manner till today and the State has no such CDs or the data."

They would say that in its first affidavit dated 1.7.2002 Shri Rahul Shama had not made any such statement but had given a **wrong version as witness No. 998 In Ex 5645**; he has neither produced CDs nor produced the CDs at the crime branch and, therefore, Mr. Rahul Sharma was holding an unlawful possession of digital data of such importance without disclosing it to any of the officers related to the investigation. This raises a question as to what had now been done with this information. Had any of the cases been reopened for re-investigation? In regard to the collateral issues thus lies exposed, applicant relies on **The State of Gujarat & Anr. vs Suryakant Chunilal Shah** reported in 1999 (1) SCC) 529.

In **B.R. Ramabhadriah vs. Secretary Food and Agriculture Department, Andhra Pradesh**, reported in 1982 (1) SCR 159, the Hon'ble Apex Court held "**the anxiety and endeavour of the Court ought to be to remedy an injustice rather than deny relief on purely technical and narrow procedural grounds**"



Therefore, whether the 3rd respondent had actually initiated the procedure or not, the issue will be to look at it comprehensively.

23. The Govt. of Gujarat, therefore, submits that they formed a departmental procedure and finding Committee regarding the CDs chapter and as the Committee had concluded that **"Mr. P.P. Pandey, Jt Commissioner had never received such original CDs from the mobile phone companies."** But the applicant points out the contradiction found in these very statements. The Committee had apparently found that the P.P. Pandey had never received the original CDs from the mobile phone companies. This is the case of **"Aswathama Hatha"** again as no one has the case that Shri P.P. Pandey received anything from the mobile companies. The case of the applicant is that through the rider, he has handed over the CDs to him.

24. In this connection, the applicant adverts to A-9 notification and because of the significance of the notification, the applicant has become a scapegoat to which he refers to Annexure A-5, which does to seem to be controverted by the respondents. *But the crucial question which would arise will be – What is an honest Police Officer supposed to do, in the circumstances? In which direction his loyalty should lie?*



25. The respondents claim is that the State though compelled to act fairly even as relating to one of his own employee is the custodian of discretion in the matter of deciding when and how to deal with its own employees. But then, it is really the nature of this personality as State which must characterise all its action and not nature of function which is decisive of the nature of scrutiny for examining the validity of its act. **The requirement of the Article 14 of the Constitution is duty to act fairly, justly and reasonably. There is nothing which militate against the concept of requiring the State always to so act even in extreme matters.** It is significant to note here that emphasis now is on the reviewability of every State action because it stems not from the nature of function but from the nature of body exercising the function and all powers possessed by a public authority, whosoever concerned, are possessed solely in order **that it may use them for the public good.** **Therefore, what is the public good in the scheme.? It is surely and squarely that the investigation which commenced on the 50 or more cases must be successfully concluded. Therefore, the bounden duty of the State ought to have been that at least when Shri P.P. Pandey claims that in 2004 he has directed Shri G.L. Singhal to look into this, the duty of the State is made clear and illuminated.** Every holder of a public office by virtue of which he acts on behalf of the State or public body is



ultimately accountable to the people in whom the sovereignty vests. Such people include all those killed and their kith and kin also and powers are to be exercised for their good as well. At least in 2004, the investigation on the CDs must have commenced and progressed. But the claims of 50 odd investigating officers could not fathom out the inability of obtaining geographical confirmation of accused's presence in a particular area requires attestation by mobile tower access and therefore, that it did not occur to any of them falls the test of reasonableness. At this point of time, the State would contend that the matter of police investigation and channelization of it is a matter of internal discretion as it is best to be left with the State itself. State and Government being two different entities, Government cannot thus subtract from the required function of the State. In this regard, applicant relies on **S. Pratap Singh vs. The State of Punjab** reported in AIR 1964 SC 72 at page 83.

26. *The Hon'ble Apex Court held in Satwant Singh vs. Assistant Passport Officer reported in AIR 1957 SC 1836 "in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine of equality for the difference in the treatment of person rests only on the arbitrary selection of the executive."*



27 In *State of West Bengal vs. Anwar Ali* reported in 1952 SC 75 "a statute is held violative of Article 14 because it has empowered the Government to select any case or a classes of cases or offences to be tried by Special Courts. This unfettered discretion is likely to be branded discriminatory and therefore, contrary to the Article 14 of the Constitution of India. Therefore, the view of the State that extreme discrimination as claimed by it, may not be actually applicable and available to it. Police investigation, even though conducted through its aegis, is distinct and contained within certain parameters.

28. The Hon'ble High Court of Madras in *Mohambharam vs. Jaivelu* reported in AIR 1970 Madras page 63 at page 73 declared that " *there is no such thing as absolute or untrammelled discretion, the nursery of despotic power, in a democracy based on the rule of law.*

Therefore, how to resolve this issue ?

29. Professor Robson, the eminent jurist in his book, *Justice and Administrative law*, published by Greenwood Press (1951) said .

"In all civilised country the judge must, in fact, possess certain conception of what is socially desirable, or at least acceptable, and his decision, when occasions arise



day, who have no beliefs as to what is harmful to the society and what beneficial, who had no bias in favour of marriage as against promiscuous, honesty as against deceit, truthfulness as against lying, courage better than cowardice, constitutional government more desirable than anarchy will not be tolerated as a judge on the bench of any western country."

30. Jaffe, the eminent jurist in his book, "The Reform of Administrative procedure" published by 2 Pub Ad R in page 141 said

"The judge or administrator must be more than an impartial referee and arbitrator lest he becomes a passionless thinking machine"

31. The great Chief Justice, PB Gajendra Gadkar, the former Chief Justice of India said in his book "***Law, Liberty and Social Justice***", published by Asia Publishing House (1955) :

"As soon as the democratic state embarks upon the adventure of achieving the ideals of a welfare state, it inevitably turns to law as its creates ally in the crusade. The function of the democratic state and its role assume wider proportions and cover a much larger horizon and in assisting the state to achieve these over expanding objectives, the function and the role of law correspondingly enlarge and cover a wider horizon... We reach a stage in the progress of the



democratic way of life where a law ceases to be passive just as democracy ceases to be passive and the purpose of law like that of democracy becomes dynamic, and that naturally raises the eternal question about the adjustment of the claims of individual liberty and freedom on the one hand, and the claims of social good on the other. It is a duel which a dynamic democracy has to face and it is the harmonious and rational settlement of this duel that law has to assist democracy."

32. Thus the powers of the public authority are therefore, essentially different from those of private persons. A man making his will may, subject to any right of his dependents, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of power. In the same way, a private person has an absolute power to allow whom he likes to use his land, release a debtor, or, where the law permits to evict a tenant, regardless of his motive. This is unfettered discretion. But a public authority may do none of the things unless it acts reasonably and in good faith and upon lawful and relevant ground of public interest.

33. In *Chintaman Rao vs. State of MP* reported in AIR 1955 SC 118 the Hon'ble Apex Court held the law as invalid as it imposes the unreasonable restriction.

"Therefore, it ensures that all State action must be reasonable and accountable to the common man, the popular sovereign."



34. Thus, when we look at it intrinsically and deeply, the State seems to have differentiated between the stand of (1) Shri P.P. Pandey (2) S.S. Chudasama (3) G.L. Singhal and (4) Rahul Sharma. It has not given any reason as to why it thought that suppression of crucial evidence had happened at the level of the applicant other than uphold the study of the Committee which entered a finding that "the mobile phone companies have not handed over any such CDs to Shri P.P. Pandey" - But none has such a case and it also subsequent to the issue. ***Therefore, on the imaginary parameters set by the Committee and in the vague premises it derives, a charge sheet seems to have been drafted which is produced at Annexure A-1.***

The defence of the applicant is in two folds :

- 1) That he had handed over the CDs to Shri PP Pandey and Shri Suralia;**
- 2) The matter relating to the CD was mentioned by him in the cross examination;**

We have already seen that the first element of this to be reasonable and possible on the following grounds :

- a) In the course of normal investigation, which commences not immediately after the incident, the requirement of geographical placement of each accused at the time of incident is crucial to fixing his responsibility



and the accountability in the crime. Modern technical revolution provides an equitable methodology of doing this by fixation of geographical placement by and in relation to mobile tower access. This is a fact which is known to even the young police constable. **It will be difficult to believe that the 50 odd investigating officers and the supervisory officers were collectively immune from this knowledge.**

- b) At that time Annexure A-3 letter was issued by a senior officer, Shri S.S. Chudasama, it is difficult to believe that he had not discussed the modality of such requirement with his superior officers and his investigating officers. The way in which Annexure A-3 was drafted indicates that **a wide and deep network was being cast to capture the accused, at least at some point before 8.5.2002 the possibility of apprehension of accused and use of this method must have illuminated the progress of investigation among the various teams as well as superior officers supervising the same.**
- c) As it was his public duty to do so, we have to assume that the 3rd respondent would have given clear cut instruction on apprehension of the accused and **this methodology of apprehension, normally would have been informed to him, in view of the circumstance of the case and allegations flying against him as well.**
- d) The very fact that the Home Minister of India, Shri LK Advani, had visited the troubled spot would have illuminated for all the **requirement for immediate and effective apprehension of all possible accused** and mobile tracking was a sure fire way of apprehending the accused.



e) That being so, there is no possible explanation for the collective forgetfulness of all concerned about the requirement of mobile data and the CDs which is available. *If Shri Pandey is to tell other officers (as provided in the reply of the State) that Shri Sharma is a computer expert and would be analysing the data, the amnesia thereafter is shocking and seemingly impossible. It will be deemed as impossible because we will not like to attribute anything to anybody.*

35. The direction given by Shri P.P. Pandey to Shri G.L. Singhal in 2004, which according to him, was made following news paper reports that CDs were called for. Therefore, this knowledge also must have been concealed in the breast of the concerned, is significant. The State has not dwelt upon any facet of this enquiry at all. At least at this point of time, to make an honest investigation, these information could have been accessed and acted upon. **Therefore, in one element of the charge made against the applicant, attrition of public interest is significantly illuminated.**

36. *Had the CDs been put to good use, the actual offenders would have been apprehended and the issue of conspiracy as alleged in the pleadings, could have been set at naught. Why this great opportunity is given a go bye, was not explained by the State in the pleading or in the hearing.*

Therefore, what is the real issue here?



(1) Is it obtainment of the CD - that cannot be because the request for the CD has gone to the mobile service providers before the applicant has come into the scene. Unless somebody has told him about it there is no possibility of him to come to know about this. If we assume that someone lower in the totem-pole had informed him, that would not have stopped Shri S.S. Chudasama from trying to access it again from the service provider unless he knew positively that the CDs have been handed over to Rahul Sharma.

(2) But had it been so and since the CDs were very important Shri Chudasama would try again to get a copy or ask Shri Rahul Sharma in one of the meetings. Therefore, the combined silence of Shri P.P. Pandey, Shri S.S. Chudasama, Shri G.L. Singhal and Shri Surolia is unconscionable and shocking. But we refrain from expressing ourselves further as they are not parties here.

37. If the obtainment of the CD was not the issue, is the infraction alleged against the applicant that he chose to speak about the CD before the Commission as according to the applicant, in the stream of the cross examination and according to the State voluntarily, as they would say, in his affidavit on 1.7.2002 he had not stated anything about the CDs. They have a case that he ought only to have spoken about the happening in Bhavnagar only following the almost brutal suppression of riots following which the applicant was removed and brought to Ahmedabad. ***Therefore, is the actual infraction of the applicant, the exposition of the CD and mobile track records,***



the immersion of which in collective amnesia must have paved the way for many an offender to escape unscathed?

38. To look at it through another angle, it is not clear in the pleadings as to what transpired to the identified 43 issues of mobile track records; had it been of use to the prosecution or investigation? Had it resulted in the reinvestigation of any of the 50 cases, then it could support the effect of late retrieval. If at all, if the CDs and their absence had resulted in some infraction in reinvestigation then it could be said that some impediment was attached to the applicant if it could be proved that he acted so as he could thus suppress wilfully the information. But the State has no such case.

39. ***Since all these are answered in the negative, it can only be held that the CDs and the track records were already with the State Government and its various officers and the production or not during cross examination voluntarily or compulsorily would not have made any difference because repetition would not make new infraction, if at all. Therefore, we have to answer that regardless of Sections 6 and 8 of the Commissions of Inquiry Act, the disclosure by the applicant of the CDs has not resulted in any new facts coming to light which by its delayed appearance had caused any***



significance to the function and purport of the State mechanism and the executive government.

40 Now coming back to the Commission of Inquiry Act and the voluntary or compulsory disclosure of the CDs, the State relies on the Law Commission of India Report, which is reproduced below :

"It has been suggested that the protection given by Section 6 to oral statements should be extended to documents. In our opinion, there is a good deal of difference between the spoken word and written word. When dealing with inquiries into matters of definite public importance, there would appear to be very little justification for extending protection to persons whose guilt is clear from any documents in their possession or custody. No doubt, if no such protection is extended, such evidence may not be readily forthcoming. One has therefore to balance the two considerations. In any event, any protection given cannot be to the same extent as is given by Section 6 in the case of the spoken word. The interests of a public enquiry would not be promoted by the enlargement of such protection, and we find that in many similar Acts no protection is afforded to the production of document. In our country also, the practice has been to treat the spoken word differently from the written word, and to extend protection to the latter only if on the merits of the case protection is needed. Such protection has often been of a very limited or specified nature. On the whole we think that the protection conferred by Section 6 does not require any enlargement."

Therefore, it answers both the proviso to Section 6 and even though the applicant has anticipated the question that the CD was produced in answer to the question and doubtlessly, the CDs and the mobile track records are absolutely relevant to the subject matter of enquiry and



Commission itself has made use of it and required the service providers to provide the information. The State also cannot question its relevance because it has formed a Committee to examine the CDs and its contents and requested for a copy, which it would not have done, had it not been relevant. **Therefore, under every Parameters, CDs are very relevant in the enquiry under the Commission.**

41. In *Ram Krishna Dalmia vs. S.R. Tendulkar* reported in AIR 1958 SC 538, the Hon'ble Apex Court held that the statement of a witness before a Commission cannot be used for any civil or criminal proceedings except in a proceeding for giving false evidence in a Commission. If we extend our enquiry a little more further, nothing prevented the State from claiming the fabrication of documents if it had a case following its examination by its own Forensic Science Laboratory that a fabricated evidence had been tendered by the Commissions process, the stipulation under Sections 193-195 of Cr. PC could have been adverted to by the State Govt. at that time itself and having not done so, the only ***presumption available is that (1) the CD is genuine (2) the CD is relevant (3) it is placed before the Commission during the cross examination for which the applicant had been legitimately and legally summoned and***



through the process of follow up action of the Commission, the relevance of compact Disks, as relevant is set at naught.

42. In Annexure A-38, which is a copy of an order dated 18.9.2009, the Justice Nanawati Commission of Inquiry dealt with the objection of the Government of Gujarat. In this regard, the relevant extract are reproduced hereinafter :

“The genuineness and authenticity of the data contained in those CDs has been questioned by the State Government. That apart, the evidence gathered as regards possession of the original CDs is inconsistent. If it is found that the original CDs had remained with Shri Rahul Sharma and were not handed over to the Crime Branch of the Police Commissioner's Office, then a question would arise why the original CDs have been withheld by Shri Rahul Sharma. Production of CDs by Shri Rahul Sharma while being cross examined by JSM and not earlier has raised some doubt about his evidence as that of an independent and disinterested person. Though the Government has questioned the credibility of Shri Rahul Sharma and challenged genuineness and authenticity of the data contained in those CDs and has submitted that as the said data does not in any manner suggest the nature of conversation between those holders of the mobile phones , the said data should be ignored completely, the Commission has not accepted that submission in toto, in view of the scope and nature of inquiry this Commission has to make. Though it does not justify issuing summons to the persons who are alleged to be the owners of those telephones, the data if found not manipulated, is likely to help this Commission in finding out the truth about involvement of those persons in the incidents of violence against the minority community. After considering all the relevant aspects of this piece of evidence, the Commission thinks it fit, at this stage, to find out from the officers who were attached to the Chief Minister's office in different capacities, if those telephones belongs to them and if they had talked to those persons during those days.”



43. Therefore, the Commission itself thought it fit that by utilising the CD, the truth about involvement of those persons in the incidents of violence can be found out and also to find out from the officers who were attached to the Chief Minister's office in different capacities, if those telephones belonged to them and if they had talked to those persons during those days. Therefore, the Commission had attached utmost importance to the matrix of the CDs and now that the second limb of the proviso to Section 6 of the Commissions of Inquiry Act is inevitably met. Therefore, having found that in the normal circumstances it has to be presumed and assumed that the first respondent and its officers had opportunities to be the custodian of the matrix of the CDs and its analysis and yet had not acted on it effectively, ***it will refer to gross failure in governance mechanism.*** In ***Associated Provincial Picture Houses Limited vs. Wednesbury Corporation***, reported in [1948] 1 King Bench at 229, "the Court is entitled to investigate the action of the authorities with a view to see whether they have taken into account matters which ought not to have been taken into account or conversely have refused to take into account or neglected to take into account matters which they ought to take into account. In addition, if the outcome is so unreasonable that no reasonable authority could



ever come to such a conclusion, Court can intervene." Therefore the principles of Wednesbury principles would indicate that the State ought to have adopted methods which would satisfy these elements .

- 1) The anxiety of the State should be the apprehension of correct accused and would have therefore, at the earliest point of obtaining the information about the geographic presence of accused would and should have immediately made use of it.***
- 2) Once the State comes to a finding that the method exists, whether it be 2002 or in 2004 or in 2011 or in 2015, the answer of the State would be in compliance with the constitutional oath pledging to keep aloft the fair and white flag of good governance unsullied. This would be reflected in its anxiety to act on the track records and effective culmination of more than 50 odd investigations or if necessary, reinvestigation so that justice would prevail at least now.***
- 3) But the current direction of the act of government seems to be oppressive in nature as it seems to suppress and oppose the apparent methodology for fair resolution available logically to it in the track record of the CD, but charge sheeting of the applicant for deposing about the CD would have an effect of preventing honest officers from taking appropriate action as canvassed by law.***
- 4) In the Indian constitutional premise, no government or authority can be an engine of oppression.***



44. The Hon'ble Apex Court in **Maharao Sahib Shri Bhim Singhji etc. vs Union Of India and Others** reported in AIR 1985 SC 1650, held "***The power of judicial review to strike at excess or mala fides is always there for vigilant exercise untrammelled by the narrow precedents of Victorian vintage.***" ***The Apex Court stipulated that thus judicial review is not only a power but a responsibility of all adjudicators.***

45. The Hon'ble Apex Court in **State of Maharashtra and Others vs Prabhu** reported in 1994 (2) SCC 481 and **Andhra Pradesh State Financial Corporation vs. M/s. Gar-Rerolling Mills and Another** reported in AIR 1994 SC 2151 had held that "Courts must do justice by promotion of good faith and prevent law from crafty invasions. The Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse interference where it is against the social interest and public good. "

Therefore, what is the social interest and public good in the matter?

46. The Hon'ble Apex Court in **H.C. Puttaswamy and Ors. vs Hon'ble Chief Justice of Karnatak High Court** reported in AIR 1991 SC 295 held "***The judiciary is the custodian of constitutional***



principles which are essential to the maintenance of the rule of law. It is the vehicle for the protection of set of values which are an integral part of our social and political philosophy. Judges are the most visible actors in the administration of justice.

Therefore, what is our responsibility?

47 The Hon'ble Apex Court in Commissioner of Police, Delhi and Another vs. Registrar, Delhi High Court, AIR 1997 SC 95, held that ***"Assurance of a fair trial is the first imperative of the dispensation of justice"***.

48. Therefore, when there is a failure to promote a fair trial as the fair trial can proceed only on marshalling all the appropriate evidence possible as for the trial to be fair, it shall be fair not only to the accused but to the victim as well. Therefore, any trial in which the full evidence was not marshalled is not a fair trial. Going by the statements of Gujarat Government it can only be assumed that the 50 odd investigations after the gap of 13 years would have been rendered unfair and unjust results, reflecting the great failure of the State machinery. And now to add insult to injury, a charge sheet is issued to an officer who had apparently aided the cause of truth.

Has not the word, Satyam Eva Jayathe, no meaning ?



49. The constitutional oath to do the best of one's ability to preserve, protect and defend the constitution and the law and that one will devote to the service of the well being of the people of India may appear to be less colourful in the context as provided earlier. It was the duty of the State to act upon the premise that it had a duty to reveal the juncture of all concerned and bring all culprits before trial.

50. It is submitted that a Government servant entering Government service does not forego his fundamental rights. But, because of his status as a person in public employment, he acquires additional rights constitutionally protected. There cannot be, therefore, any manifest deprivation of that status under law. Any such treatment would be arbitrary and unreasonable as (1) P.P. Pandey, (2) S.S. Chudasama, (3) Kaushik, (4) Surolia seem to be excluded, may then be considered as unequal treatment and a naked discrimination as stated by the Hon'ble Apex Court in **D.S. Reddy vs. Chancellor vs. Osmania University** reported in 1967 (2) SCR 214 and **Dr. L.P. Agarwal vs. Union of India** reported in 1992 (3) SCC 526.

51. In fact, in **S.R. Bommai vs. Union of India**, reported in 1994 SCC (3), the methodology of judicial review is expressed by the Hon'ble Apex Court "***There must be objectivity even in subjectivity.***"



The constitutional system of Government abhors absolutism. It is premised on the Rule of law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself."

52 As regards Article 13 of the Constitution of India, the Hon'ble Apex Court had upheld the constitutional validity of the ninth schedule as reported in **Sri Sankari Prasad Singh Deo vs Union Of India And State Of Bihar**, AIR 1951 SC 458. But **Sankari** was overruled in **I.C. Golaknath vs. State of Punjab and Anr.**, reported in AIR 1967 SC 1643, which brought back the supremacy of Part III of the Constitution and in that light, what are the transgressions claimed by the applicant in the issue of Annexure A-1 and its consequences?

1) It is in the natural cause of progression of an investigation under law that Annexure A-3 was issued;

2) After it is issued, if it is to be ignored, sufficient reason should exist in the crime diary, which is in the possession of the respondents;



- 3) *Having not alluded to the reason for such exclusion of evidence, a naked discrimination is brought about, which is barred by constitutional compulsions.*
- 4) *Through admissions available, the juncture of (1) Shri Kaushik, (2) Shri P.P. Pandey, (3) Shri S.S. Chudasama and (4) Shri Surolia, being evident, the non explanation of the exclusion of these gentlemen and inclusion of the applicant seem to be coloured by malice and mala fides.*
- 5) *In any case, utilisation of the mobile tracking contained in the CD calls for progress of sincere investigation. By seeking, in a way, its suppression, the State of Gujarat must be breaching its sanctified responsibility under Raja Dharma.*
- 6) *If the State of Gujarat continues with its contention that the applicant was only called upon to depose as to the Bhavnagar incidents alone, even though specifically summoned by the Commission, reluctance to part with the CD will tantamount to negation of the theory of “See truth and nothing but the whole truth” which is required of a witness. This will be then perjury.*



- 7) *Since perjury is a criminal offence, no governance authority can seek it, even under any pretences.*
- 8) *Therefore, the applicant claims that the unregulated exercise of discretion involved in execution of Annexure A-1 tantamounts malice in law and fact.*
- 9) *In relation to the information on mobile tracks on the CD, the applicant claims that the anxious focus of the Government ought to have been on the utilisation of the same and apprehension of the accused.*
- 10) *The applicant claims that a divergent view to focus on the production of the CD was taken may highlight a contention that it was done to sway attention away from the actual culprits and for this, the applicant is being made a scapegoat.*

53. In relation to the above, the Hon'ble Apex Court in *Shalini Soni vs. Union of India*, reported in AIR 1981 SC 431, said *"It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and*



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remote."

Therefore, the applicant claims that the Annexure A-1 is not only unjust, illegal, arbitrary and a lopsided exercise of colourable discretion but also tainted by mischief, mala fides and malice as the actual result of the suppression of the mobile tracking records in the CD is to benefit the actual perpetrators of brutal and violent crimes through which hundreds of innocents died a needless and violent death.

54. On a combined conspectus of all that is discussed above, the following declaration is issued :

(a) There shall be a declaration that the Annexure A-1 is tainted by mischief, mala fides and malice and coloured by arbitrariness, illegality and designed to defeat proximate and pertinent matters blessed by constitutional compulsion and designed as an engine of oppression;

(b) Annexure A-1 is held to be hit by the provisions of Sections 6 and 8 of the Commissions of Inquiry Act and its provisos and thus inoperable under law;



(O.A.No.294 of 2011 – Ahmedabad Bench)

(c) Annexure A-1 is thus quashed.

In the light of the above, all the M.As are disposed off.

55. The Original Application is thus allowed. No costs.

-sd-

(K.N. SHRIVASTAVA)
ADMINISTRATIVE MEMBER

-sd-

(DR. K.B.SURESH)
JUDICIAL MEMBER

Cvr



तैयार करनेवाला
PREPARED BY K.B. Suresh
मिलानेवाला
COMPARED BY
सही प्रतिलिपि
TRUE COPY
22/01/16

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Central Administrative Tribunal
अहमदाबाद बेंच
Ahmedabad Bench