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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.1082 of 2022

1. Suhas Chakma, Director, National Campaign Against Torture having its office at C-3/441, Janakpuri, New Delhi-110058.
2. Smt. Soibam Anju Devi, aged about 44 years, Wife of late Palungbam Kunjabihari Bose of Lairikyengbam makha Leikai, PO & PS Porompat, Imphal East, Manipur-795010.
3. Smt. Ningthoujam Edina Devi, aged about 39 years, wife of late Ningthoujam Ananda Singh of Moirangkampu Sajeb Makha Leikai, PS Porompat & Sawombung Sub-Division, Imphal East, Manipur-795010.

...Petitioners

– Versus –

1. The State of Manipur represented by the Chief Secretary to the Government of Manipur having its office at old Secretariat, Babupara, PO 7 PS Imphal, Imphal West District, Manipur-795001.
2. The National Human Rights Commission through its Registrar having its office at GPO Complex, Manav Adhikar Bhawan, C Block, INA, New Delhi-110023.

.... Respondents.

BEFORE**HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN**

For the Petitioners : Mr. O. Kiranjit, Adv & Y. Arunkumar,
Adv.
For the Respondents : Mr. Shyam Sharma, GA.
Date of reserved. : 27.06.2023
Date of Judgment & Order : 02.08.2023.

JUDGMENT & ORDER
(CAV)

[1] Heard Mr.Y. Arunkumar, learned counsel for the petitioners and Mr. Shyam Sharma, the learned Government Advocate for the respondents.

[2] The writ petition has been filed by the petitioners for issuance of a writ of mandamus directing the first respondent to comply with the order dated 5.3.2020 passed in NHRC Case No.42/14/4/08-09-FE and to pay an amount of Rs.5 lakh each as monetary compensation to the next of kin of two deceased persons, namely Ningthoujam Ananda Singh and Palungbam Kunabihari @ Bose @ Abung and to submit a compliance report along with proof of payment.

[3] The case of the petitioners is that the first petitioner has filed a Complaint Case No.42/14/4/08-09-FE before the National Human Rights Commission (NHRC) in connection with killing of Ningthoujam Ananda Singh and Palungbam Kunabihari @ Bose @ Abung in a fake encounter by the Manipur Police Commandos and 16th Assam Rifles at Kanglatombi Makhan Road, Imphal on 21.1.2009. Despite the recommendation of the NHRC to pay monetary relief

to the next of kin of the two deceased, the first respondent has failed to comply with the recommendation of the NHRC. The second respondent has also failed to fulfil its statutory obligation to enforce its order dated 5.3.2020. Earlier, the first petitioner has approached the Delhi High Court for enforcement of the recommendation made by the NHRC, however, the same was dismissed with liberty to approach the Manipur High Court. Hence, the petitioners have filed the present writ petition.

[4] The learned counsel for the petitioners submitted that, by the order dated 5.3.2020, the second respondent recommended monetary relief to the next of kin of the deceased Ningthoujam Ananda Singh and Palungbam Kunabihari @ Bose @ Abung. However, the first respondent has failed to comply with the said recommendation of the second respondent till date.

[5] The learned counsel would submit that the first respondent is duty bound to implement the orders passed by the second respondent and that the first respondent has not preferred any appeal against the order dated 5.3.2020 passed by the second respondent and allowed the order to attain finality. Therefore, the inaction of the respondents is violative of Article 21 of the Constitution of India. Thus, a prayer has been made to direct the first respondent to comply with the order dated 5.3.2020 passed in NHRC Case No.42/14/4/08-09/FE within the stipulated time.

[6] Refuting the submissions made by the learned counsel for the petitioner, the learned Government Advocate submitted that there is no merit in the writ petition and, therefore, the same is liable to be dismissed.

[7] This Court considered the rival submissions and also perused the materials available on record.

[8] It appears that on 28.1.2009, the first petitioner lodged a complaint with the second respondent against the alleged extra-judicial killing of Ningthoujam Ananda Singh and Palungbam Kunabihari @ Bose @ Abung by a combined force of Manipur Police Commandos and the 16th Assam Rifles at Kanglatombi Makhan Road, Imphal. The second respondent, after taking cognizance and upon hearing the parties, held that the deceased were killed by the combined force in an extra-judicial manner and their right to life was violated by the police. After issuance of show cause notice under Section 18 of the Protection of Human Rights Act, 1993 and after calling for response from the first respondent, vide order dated 5.2.2020, the second respondent recommended payment of Rs.5 lakh each as monetary compensation to the next of kin of the two deceased namely Ningthoujam Ananda Singh and Palungbam Kunabihari @ Bose @ Abung and submit a compliance report along with proof of payment within six weeks positively. It also appears that subsequent to the passing of the order, on 21.9.2020, the second respondent wrote a letter to the first respondent and directed to submit the compliance report of the order dated 5.3.2020 and

closed the case observing that it will be open for the next of kin of the deceased to approach the competent Court of law for claiming the relief.

[9] Being aggrieved by the closure of the case without seeking compliance of the order dated 5.3.2020, the first petitioner has filed W.P.(C) No.1939 of 2021 before the Delhi High Court. By the order dated 20.9.2022, the Delhi High Court dismissed the said writ petition. While dismissing the writ petition, the Delhi High Court granted liberty to the petitioner therein to approach the jurisdictional High Court. The operative portion of the order dated 20.9.2022 reads thus:

“5. The Court notes that the entire issue emanates from the order of 05 March 2020 which dealt with certain incidents which are stated to have taken place in the State of Manipur. In that view of the matter and since it would always be open for the petitioner to approach the jurisdictional High Court for enforcement of orders that may have been passed by the Commission, the Court finds no ground to continue this writ petition any further. It shall consequently stand dismissed with liberty reserved as aforesaid.”

[10] The order dated 20.09.2022 has been passed by the Delhi High Court after hearing the respondent State and the NHRC and pursuant to the liberty aforesaid, the petitioners have filed the present writ petition.

[11] As stated supra, the NHRC directed the Chief Secretary of the Government of Manipur to pay an amount of Rs.5 lakh each as monetary compensation to the next of kin of the deceased persons. The first petitioner is the Director of the National Campaign for Prevention of Torture and the

petitioners 2 and 3 are the next kin of the deceased Ningthoujam Ananda Singh and Palungbam Kunabihari @ Bose @ Abung respectively. There is no dispute on it.

[12] As could be seen from the records that after passing of the order dated 5.3.2020, the petitioners have approached the NHRC and complained about the non-compliance of the direction/recommendation made by the NHRC. In fact, the NHRC had also addressed a letter to the Chief Secretary of the State of Manipur to take steps for compliance of the order.

[13] As rightly argued by the learned counsel for the petitioners, the order dated 5.3.2020 passed by the second respondent has attained finality. In the absence of the order dated 5.3.2020 being set aside, modified and/or reviewed, it is the bounden duty of the first respondent to comply with the recommendation made by the NHRC. The failure of the compliance of the order of the second respondent by the first respondent is defeated the purpose of enacting the legislation.

[14] The National Human Rights Commission, after considering the provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights, has rightly recommended compensation of Rs.5 lakh each payable by the first respondent to the next of kin of the deceased persons. As stated supra, in the absence of the order dated 5.3.2020 being set

aside by the higher forum/court, it is the duty of the first respondent to comply with the said direction issued the second respondent.

[15] In a catena of decisions, the Hon'ble Supreme Court held that the State Governments are expected to abide by the directions issued by the NHRC in regard to compensation and other issues as may arise from time to time. The Hon'ble Supreme Court has also held that if the people of our country are deprived of human rights or cannot have them enforced, democracy itself would be in peril.

[16] In the case on hand, having recommended compensation to the next of kin of the deceased by the second respondent, the petitioners 2 and 3 who are wife of late Palungbam Kunjabihari Bose and the wife of Ningthoujam Ananda Singh, have not yet received the compensation and for one reason or the other, the first respondent is dragging the matter, which necessitated the petitioners to approach this Court for direction to direct the first respondent to comply with the order dated 5.3.2020 passed in NHRC Case No.42/14/4/08-09/FE. This Court is of the view that there appears to be some merit in the case of the petitioners and, accordingly, they are entitled to the relief prayed for in the writ petition.

[17] At this juncture, this court feels it just and proper to refer to certain observations of a Full Bench of the Madras High Court in the case of Abdul Sathar vs. The Principal Secretary to Government, Home Department and Ors.

[Order dated 5.2.2021 passed in W.P.No.41791 of 2006 etc. batch cases], which read thus:

“490. In the conspectus of the above discourse, the following is our summation to the terms of the Reference:

(i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?

Ans: The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the H.R. Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act.

(ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances?

Ans: As our answer is in the affirmative in respect of the first point of Reference, the same holds good for this point of Reference as well. We having held that the recommendation is binding, the State has no discretion to avoid implementation of the recommendation and in case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation?

Ans: Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a)(i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

'(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims

of violation of human rights under sub-clause(i) of clause(a) of Section 18 of the Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation?'

Ans: As far as the initiation of disciplinary proceedings under the relevant Service Rules is concerned, for recovery of compensation, mere show cause notice is sufficient in regard to the quantum of compensation recommended and to be recovered from the Officers/employees of the concerned Government. However, in regard to imposition of penalty as a consequence of a delinquent official being found guilty of the violation, a limited departmental enquiry may be conducted only to ascertain the extent of culpability of the Official concerned in causing violation in order to formulate an opinion of the punishing Authority as to the proportionality of the punishment to be imposed on the official concerned. This procedure may be followed only in cases where the disciplinary authority/punishing authority comes to the conclusion on the basis of the inquiry proceedings and the recommendations of the Commission that the delinquent official is required to be visited with any of the major penalties enumerated in the relevant Service Regulations.

As far as imposition of minor penalty is concerned, a mere show cause notice is fair enough, as the existing Service Rules of all services specifically contemplate only show cause notice in any minor penalty proceedings.

(v) Whether Officers of the State who have been found to be responsible by the State Human Rights Commission for causing violation of human rights under Section 18 of the Protection of Human Rights Act, 1993, are entitled to impeach such orders passed by the Commission in proceedings under Article 226 of the Constitution and if so, at what stage and to which extent?

Ans: As we have held that the recommendation of the Commission under Section 18 of the Act is binding and enforceable, the

Officers/employees of the State who have been found responsible for causing violation of human rights by the Commission, are entitled to assail such orders passed by the Commission by taking recourse to remedies of judicial review provided under the Constitution of India. It is open to the aggrieved officers/employees to approach the competent Court to challenge the findings as well as recommendations of the Commission.

491. As a corollary to the above conclusion, since the recommendation of the H.R. Commission is held to be binding, an officer/employee concerned can resort to appropriate legal remedy at any stage qua complaint or inquiry by the Commission but only on substantial legal grounds.

492. Before we part with this Reference, we are constrained to express our considered opinion that despite all the provisions in the Act, covering wide spectrum of human rights concerns in consonance with the Rule of Law governing our polity, in the absence of an inbuilt and integral provision within the explicit frame work of the Statute, a perception has been gaining ground in the corridors of the implementing authorities that the recommendation of the H.R. Commission lacks legal sanctity and hence can be trifled with. Such perception and point of view on the part of the implementing authority may not augur well towards addressing the complaints of human rights violation in the country where the written Constitution reigns supreme and is placed at the altar of our governance.

493. Although the history after the introduction of the Act, reveals that by and large the recommendations of the Commission have been implemented, any discretion to the implementing authorities to either accept or not accept the recommendation would only lead to avoidable delay, forcing the Commission to invoke Section 18(b) of the Act.

494. In a constitutional democracy, there is always a possibility of change of Governments, policy makers and so are the policies. The

policies are always in a state of fluidity depending on expectations resulting in shifts and changes of perspective framework of the policy makers. In such circumstances, at the time of enactment of the Act, an assurance given on behalf of the Treasury Bench by the Hon'ble Minister concerned that recommendation of the H.R. Commission would be accorded due respect as in the case of recommendation of the Finance Commission and the Government in the past had never declined to accept the recommendation of the Finance Commission as matter of healthy convention.

495. The history of politics and governance has been witnessing constant change through evolution of different policies and as a consequence of such change any convention observed in the past has its breaking point in tune with the time. Therefore, the Act which was introduced providing a public law remedy, cannot be operated on the basis of the assurance of the Hon'ble Minister concerned, unless the assurance is transformed into a letter of law for all the time to be followed.

496. The avowed intention of the policy framed at that point of time was clear but at the same time, following any convention after all is a only a matter of choice at the end of the day. If in this context, we are of the considered opinion that the intention of the framers may be given a statutory sanction within the Act itself to make the Act a complete code in itself instead of invoking the jurisdiction of the Constitutional Court for execution of the recommendation.

497. We earnestly trust and hope that the Parliament in its collective wisdom would bring necessary amendments in the Act to provide wherewithal to the Commission for direct execution of the recommendation. By such initiation, the learned Parliament would be according befitting status to the Commission steered by the high constitutional dignitaries of the highest legal order.

498. In the said circumstances, we hereby suggest to the policy makers to make suitable amendment/s in the Act providing for an internal/self-contained mechanism qua Human Rights Commission

for enforcing its recommendations under Section 18 of the Act. By such amendment/s, the Act would become complete in all fours, leaving no room for procrastination in offering remedial action promptly.”

(emphasis supplied)

[19] In the case on hand, the order of the NHRC has attained finality and is not subject matter of challenge by the respondents. Therefore, the proposition in the aforesaid directives of the Full Bench of the Madras High Court only leads to the conclusion that the respondents are bound to comply with the recommendation of the NHRC.

[20] In the result,

(i) The writ petition is allowed.

(ii) The first respondent is directed to comply with the order dated 5.3.2020 passed in NHRC Case No.42/14p/4/08-09-FE and to pay the amount of Rs.5 lakh each as monetary compensation to the petitioners 2 and 3, within a period of twelve weeks from the date of receipt of a copy of this order.

(iii) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom