

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.P.No.9188 OF 2004

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

The petitioners pray for Writ of Certiorari to call for records in HRC.No.15/2003 including the order dated 29.04.2004 and quash the same as illegal and without jurisdiction.

The issue arises under the Protection of Human Rights Act, 1993 (for short "the Act").

The factual matrix necessary of writ petition is as follows:

One Bhonagiri Savitri/2nd respondent herein filed complaint on the alleged torture of her husband B.Srinivasa Rao before the State Human Rights Committee/1st respondent against the petitioners herein during the alleged illegal custody of Srinivasa Rao from 20.02.2003 to 10.03.2003 in the police station. The case of 2nd respondent is that on 22.02.2003 a telegraphic complaint was forwarded to 1st respondent about the arrest or detention of her husband Srinivasa Rao on 20.02.2003 and the non-production of Srinivasa Rao before the competent Court within 24 hours, as illegal and unconstitutional. It is the case of the 2nd respondent that the illegal detention continued up to 10.03.2003 and during this period, the petitioners were subjected to physical and mental torture. The acts of commission and omission amount to human rights violation and, therefore, the 2nd respondent prayed for appropriate reliefs under the Act.

The petitioners filed counter in H.R.C.No.15/2003 and opposed the complaint on all fours. From the material available on record, we notice that the parties adduced oral and documentary evidence before the 1st respondent. The 1st respondent has framed the following points for determination:

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- “(i) Whether the respondents have violated human rights by detaining in police custody B.Srinivasa Rao 20.02.2003 to 10.03.2003?
 - (ii) Whether the respondents 1 and 2 have violated human rights by torturing B.Srinivasa Rao in police custody?

There was difference of opinion between the two Hon’ble Members of 1st respondent Committee on Point No.i and on account of difference of opinion between the Members, the point was referred to the Hon’ble Chairman of State Human Rights Committee for a finding on the alleged human rights violation. Briefly noted, the Hon’ble Chairman agreed with the conclusions arrived at by Mr.Justice A.Hanumanthu, Member (Retired) and the findings read as follows:

.....It is for the police to explain why such curious and strange things happened as findings of Sreenivasa Rao in the C.I’s office at 4.00 A.M., after an absence of several days from his house. The wife has been complaining through out that her husband has been taken away from their residence and he was not traced since last several days. This lends credibility to the earlier statements given by her. Apparently the statement given in the final enquiry was due to threat from the police that he will be implicated in the murder case which was pending or they were paid of some money to file a petition/memo for withdrawal and go back from their earlier statements. I do not find any justification for prosecution of the detainee Sreenivasa Rao under Section 191 IPC and allowing the respondents to go scot free.”

The 1st respondent having regard to above findings issued the following directions against petitioners for compliance:

“As per the majority view, State of Andhra Pradesh is directed to:

- (a) pay a sum of Rs.2,00,000-00 (Rupees two lakhs only) as compensation to the victim Bhonagiri Sreenivasa Rao (C.W-5) and in addition to this, the 1st respondent G.Murali Krishna, C.I. of Police is directed to pay a sum of Rs.75,000-00 (Rupees seventy five thousand) and 2nd respondent V.Rama

Krishna Reddy, A.S.I is directed to pay Rs.25,000/- as compensation. The State of A.P is further directed to pay the compensation payable by R-1 and R-2 in the first instance and recover the same from R-1 and R-2 subsequently payable to the victim Bhonagiri Sreenivasa Rao. These amounts shall be paid within three months from the date of the receipt of this order.

- (b) initiate disciplinary proceedings against all the respondents.
- (c) take steps for initiating criminal proceedings against the respondents 1 and 2 herein for the offences including those pointed out in this order.
- (d) Issue orders that the 1st respondent G.Murali Krishna, C.I. of Police, Bheemavaram Rural Circle shall not himself investigate or be associated with the investigation of Cr.No.8/2001 of Palakoderu P.S.
- (e) Entrust the investigation in the said Crime No.8/2001 of Palakoderu P.S to C.B.C.I.D to trace out the culprits and prosecute them.”

Hence, the writ petition.

Sri Venkateswar Rao, learned counsel appearing for the petitioners, vehemently contends that the findings recorded on point No.i are without evidence and unavailable presumptions in law are drawn against petitioners by the majority view and it is the submission of the learned counsel that the crucial aspect weighed with 1st respondent on the alleged illegal detention is the presence of Srinivasa Rao in the verandah of Bhimavaram (Rural Police Station) at 04.00 A.M., on 11.03.2003. According to the learned counsel, even assuming without admitting that the said Srinivasa Rao was found by the learned Advocate Commissioner at 04.00 A.M., in the verandah of Police Station as stated above to infer illegal custody, or at least custody by police, something more is required and, therefore, he contends that the findings recorded by the 1st respondent on Point No.i are without evidence and perverse. It is submitted that the 1st respondent failed to take note of the retracted statement of 2nd respondent and having regard to involvement of Srinivasa Rao in an offence, the present complaint

before the 1st respondent is filed with dishonest intention. On direction issued while answering Point No.ii, the learned counsel submits that under Section 18 of the Act, the 1st respondent has jurisdiction to recommend its findings on alleged human rights violation to the Government for appropriate decision and it is for the Government to decide on the recommendations of the 1st respondent. In the case on hand, directions are issued to pay the sums referred to above and such directions are illegal and without jurisdiction and liable to be set aside.

We have perused the material available on record and noted the submissions of petitioners. The petitioners pray for certiorari. The short point is – whether the petitioners have made out case for grant of any relief or not.

It is well settled that this Court under Article 226 of the Constitution of India does not re-appreciate the oral and documentary evidence available on record, and record independent findings on an issue. In the judicial review, this Court is concerned with the patent illegality or decision making process of the 1st respondent. Keeping in mind the above scope of judicial review, we have considered the case of 2nd respondent and the reply of petitioners, as set out in the order dated 29.04.2004.

Prima facie, we are of the view that the submissions canvassed by the petitioners against the findings on Point No.1 are misconceived and not available to the petitioners in the facts and circumstances of this case. It is matter of record that the petitioners could not explain the presence of Srinivasa Rao in the precincts of police station on 11.03.2003. As rightly observed by the 1st respondent, the burden is on the petitioners to show that the complaint of illegal custody made against them from 20.02.2003 to 10.03.2003 is without basis. In our considered view, the petitioners failed to discharge the burden and consequently the conclusions, on detailed examination of evidence, arrived at by the 1st respondent are

tenable and accordingly upheld.

It is further contended that under Section 18 of the Act, the 1st respondent can recommend to the Government for appropriate decision on the report/findings against the alleged human violation, and not to pass a decree against petitioners. In other words, the petitioners contend that the 1st respondent has no power or jurisdiction to direct payment under the Act. The learned counsel draws our attention to Section 18 of the Act, which reads as follows:

Steps during and after inquiry:-

The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

- (a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abatement thereof by a public servant, **it may recommend to the concerned Government or authority –**
 - (i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
 - (ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;
 - (iii) to take such further action as it may think fit;
- (b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;
- (e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such

further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

- (f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

We have carefully perused the directives of 1st respondent and also the mandate under Section 18 of the Act. Without much deliberation, we are satisfied that the 1st respondent ought to have sent its recommendations to the Government or the authority for appropriate decision but ought not to have issued directives as referred to above for payment. In our view, the 1st respondent can recommend for decision of appropriate Government on alleged human right violation, but cannot direct payment of compensation.

Therefore, having regard to the view we have taken on both the points and to meet the ends of justice, we are satisfied that the writ petition can be disposed of by treating the directives issued in operative portion of the impugned order as recommendation of 1st respondent for appropriate decision by the State Government. The State Government is directed to examine the entire record and take appropriate decision and communicate the same to 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order.

For timely action and to avoid delay, the Registry is directed to mark a copy of the instant order to the Government of Andhra Pradesh, Home Department, represented by its Principal Secretary, along with the order dated 29.04.2004 in H.R.C.No.15/2003 for appropriate decision on the recommendations.

Writ petition is accordingly ordered. No order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand

disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J
Date: 08. 07.2015
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