

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8955 of 2013

Satya Narayan Mandal S/O Late Shaini Mandal R/O Village & P.O.- Kajhi, P.S.- Banmankhi, District- Purnia, Now At Present Senior Deputy Collector, Saharsa - Cum - Superintendent, District Jail Saharsa

.... Petitioner/s

Versus

- 1. The State Of Bihar, Home Secretary, Bihar, Patna
- 2. Chair Person, Bihar Human Rights Commission, Bailey Road, Patna
- 3. Deputy Secretary Bihar Human Rights Commission, Bailey Road, Patna
- 4. Avinash Prasad Singh S/O Kartik Singh R/O Village- Navinagar Sardiha, P.S.- Simri Bakhtiyarpur, District- Saharsa
- 5. The Principal Secretary, Bihar Public Administration Department, Govt. of Bihar, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar
For the State Mr. Alok Ranjan
AC to GA 6
For respondent no.4 Mr. Arun Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 29-09-2016

Heard the counsel for the petitioner and the State.

A complaint was lodged against the petitioner who was then functioning as In-charge-Jail Superintendent, Saharsa which gave rise to Case No. BHRC/Comp-2028 of 2012 on the file of the Bihar Human Rights Commission (in short ‘the BHRC’). It was alleged that due to arbitrary action on the part of the petitioner, the complainant had to suffer jail custody beyond 28.05.2012 The respondent BHRC having noticed the relevant facts prima facie held the view that it was a case where a notice was required to be issued under section 16 of the Protection of Human Rights Act, 1993 (for short ‘the Act’). Unquestionably, the petitioner, pursuant to the notice, appeared and filed his show cause. The matter was thereafter considered by the respondent BHRC in

presence of the complainant, the petitioner and the superior authority of the Jail Department. On a consideration of the materials available on record, the Chairperson of the BHRC passed an order on 04.03.2013, whereby the petitioner was directed to compensate to the complainant and the State Government was also recommended to consider initiation of a departmental proceeding against him. The present writ application challenges the correctness of the said order passed by the Chairperson of the respondent BHRC.

The BHRC in the said order observed as under:-

“In any case, after his acquittal in Simri-Bakhtiarpur P.S. Case No.171/10 it was not the business of Jail Superintendent to keep him in detention except that he had to be produced in another case at a different place, and yet he refused to hand over applicant's custody when the police party came with a valid production warrant on the ground of security. The Commission is inclined to think that what really weighed with the authorities was the fact that the tickets had been booked for train journey and reservation had been made. The plea that the police party was not armed or that they did not have the 'command' is not borne out by the records. In any view, having been acquitted in the case in connection with which applicant was lodged in the jail at Saharsa, it was totally unjustified on the part of the Jail Superintendent to insist on the fact that the police party was not armed. This indeed was the concern of the Rajasthan police which was in possession of the valid production warrant and had come to take applicant's custody. The case of the applicant is that demand of bribe of Rs. 3000 was made by the Jailor but the applicant did not oblige and he therefore managed to stall handing over his custody to the Rajasthan police.

In the circumstances, the Commission is satisfied that the detention of the applicant in Saharsa Jail beyond 28.05.2012 and in any case beyond 22.06.2012 was unjustified and an abuse of authority-resulting in violation of applicant's human

rights for which he deserves to be monetarily compensated. In the circumstances, compensation of rupees fifty thousand is awarded to the applicant recoverable from salary of Satya Narayan Mandal, Superintendent, District Jail, Saharsa. Apart from monetary compensation Sri Mandal deserves to be punished departmentally for his acts of omission and commission. IG Prisons accordingly should consider initiating departmental proceeding against him.”

If the respondent-BHRC finds serious lapses on the part of the State authority resulting in violation of the human rights of a citizen then it is inherent in the jurisdiction to direct the person offending the human rights of the citizens to compensate monetarily. In case at hand, the respondent BHRC having found that there was a clear violation of the human rights of the complainant at the hands of the writ petitioner, passed an order. The respondent BHRC, however, also observed that it is for the State Government to consider initiating departmental proceeding against him.

The counsel for the petitioner has submitted that the respondent BHRC committed an error in directing initiation of a departmental proceeding against the petitioner. At best, the respondent BHRC could have only recommended. It is for the State Government to consider whether facts are such which would warrant a departmental proceeding.

In the light of the said submission I have perused the order passed by the respondent BHRC. It is found that no direction has been issued by the BHRC for departmental proceeding against the petitioner. The Chairperson of the BHRC in the said order has only opined that it is a fit case for a departmental proceeding for the omissions and commissions on the part of the writ petitioner who was then functioning as the In-charge-Jail Superintendent, Saharsa. The State Government was recommended to consider initiation of a departmental

proceeding. It was not a direction for initiating a departmental proceeding. The State Government has filed an affidavit in reply stating that on a consideration of materials on record and also the finding recorded by the BHRC, it has been resolved to initiate a departmental proceeding against the petitioner.

This Court in a writ jurisdiction would interfere with the order of the respondent BHRC if any patent illegality in the procedure adopted by the respondent BHRC is shown causing serious prejudice to the petitioner. If there is lack of jurisdiction on the part of the respondent BHRC, then also the Court can interfere with the order of the respondent BHRC. No such patent defect in the procedure adopted by the respondent BHRC or the lack of jurisdiction in it has been shown to this Court.

Resultantly, the Court does not find it a fit case where the writ jurisdiction of this Court can be invoked and the order at Anneure-9 passed by the Chairperson of the BHRC can be interfered with.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

HR/-

AFR/NAFR	NAFR
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