

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7320 of 2013

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1. Ranjeet Kumar Son Of Sri Ram Talika Pandey Resident Of Mohalla - Gajrar, Gaura Kashni, Police Station - Modle Thana Sasaram, District - Rohtash At Present As Sub Inspector, Pirbahor Police Station, District - Patna (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Old Secretariat, Bihar, Patna
2. The Bihar Human Right Commission Through Its Secretary, 9 Bailey Road, Patna
3. The Secretary, Bihar Human Right Commission, 9 Bailey Road, Patna
4. The Deputy Secretary, Bihar Human Right Commission, 9 Bailey Road, Patna
5. The Principal Secretary, Home (Police) Government Of Bihar, Old Secretariat, Bihar, Patna
6. The Director General Of Police, Government Of Bihar, Old Secretariat, Bihar, Patna
7. The Senior Superintendent Of Police, Patna
8. The City Superintendent Of Police, Patna (West), Patna
9. The Sub Divisional Police Officer, Phulwarisharif, Patna
10. The Officer-In-Charge, Naubatpur Police Station, Patna
11. Smt. Nirupama Singh Wife Of Santosh Kumar @ Santosh Singh Resident Of Village - Dehrigorah, Police Station Naubatpur, District – Patna.
12. Santosh Kumar @ Santosh Singh, son of Late Ramanand Singh, village-Dehrigorah, P.S.- Naubatpur, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratnesh Kumar Singh
For the Respondent/s : Mr. Ashok Kumar Keshri, A.A.G.-11
Mr. Chandara Moleshwar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
C.A.V..JUDGMENT

Date: 20 -04-2016

Challenge in this writ application is to the order dated 22.01.2013 passed by the Bihar Human Rights Commission (for short 'BHRC') by which, it is stated, the BHRC reviewed its order dated 17.10.2012 and issued notice in terms of Section 16 of the Protection of Human Rights Act 1993 (for short 'the Act') as also the final order



dated 04.03.2013 (Annexure-13) passed in File No. BHRC/Comp. 2214/12 directing the State respondents to recover Rs. 50,000/- from the salary of the petitioner and to pay the amount to the applicant's husband (respondent no. 12) besides directing the respondent Senior Superintendent of Police, Patna to consider to initiate disciplinary proceeding and criminal case against the writ petitioner.

During the relevant period, the petitioner was posted as the Sub-Inspector of Police at Naubatpur Police Station. While on patrol along with S.A.P. Force in the evening of 15.5.2012, he received a confidential information that Santosh Kumar @ Santosh Singh (respondent no. 12) was having illicit arms. He proceeded to the place of occurrence and raided the house of respondent no. 12. He was found sleeping. A country made pistol with two live cartridges were allegedly recovered from beneath the pillow of his bed. In presence of two witnesses, a seizure memo was prepared and he was taken into custody. On his statement, Naubatpur P.S. Case No. 120 of 2012 dated 15.5.2012 under various penal provisions of the Arms Act was registered and the investigation ensued. The respondent no. 12 was produced before the Additional Chief Judicial Magistrate, Danapur on 16.5.2012 and under orders of the Court was sent to judicial custody. Later, the respondent no. 11 (wife of respondent no. 12) filed a complaint on 06.06.2012 before the BHRC alleging that she was



being harassed by her cousin brothers on account of property dispute for which criminal complaints were lodged by her. Her husband was illegally framed in Naubatpur P.S. Case No. 120 of 2012 in connivance with the local police officers and elected representatives. The husband of the petitioner was later granted bail by the Additional Sessions Judge-II, Patna on 16.6.2012. In course of investigation of Naubatpur P.S. Case No. 120 of 2012, it was found that the case of possessing illegal/unauthorized arm was true against one Prashant Satyam @ Ranu and untrue against F.I.R. named accused Santosh Kumar @ Santosh Singh (respondent no. 12). In the meanwhile, the BHRC called for a report from the Sub-Divisional Police Officer, Phulwarisharif and on receipt of the report passed the following order dated 17.10.2012:-

“From the report of SDPO Phulwarisharif passed on to this Commission by Sr. S.P. Patna it appears that the involvement of the applicant’s husband in Naubatpur P.S. Case No. 120/12 was not established. The case has been found to true against non-FIR accused Prashant Satyam @ Ranu. The Commission is not inclined to pursue this matter.

File is closed. Inform.”

On 5.12.2012, the respondent no. 11 filed an application (Annexure-10) before the BHRC setting out certain facts in relation to her complaint earlier lodged requesting the BHRC to pass appropriate orders. It was alleged that the writ petitioner in collusion with her enemies had illegally framed her husband (respondent no. 12) and he



had to suffer incarceration for several days. The right inherent in a human being to live with dignity was breached by the writ petitioner. Vide order dated 22.01.2013 (part of Annexure-9), the BHRC decided to proceed against the writ petitioner and issued notice to him for filing written defence. The said order has been called as the order of review by the petitioner and challenged in the writ petition. On receipt of notice, the petitioner filed his detailed written defence on 28.02.2013 (Annexure-12) controverting the case of the applicant (respondent no. 11). Incidentally, it may be mentioned here that in Naubatpur P.S. Case No. 120 of 2012, the husband of the petitioner was not sent up for trial. Instead, non-F.I.R. accused namely Prashant Satyam @ Ranu was sent up for trial which is pending consideration on the file of the learned Trial Court. On filing of the written defence, the matter was heard by the BHRC on 28.02.2013 in presence of the writ petitioner and the final order was passed on 04.03.2013 leading to filing of the present writ petition.

Heard Mr. Ratnesh Kumar Singh in support of the application and Mr. Ashok Kumar Keshri, A.A.G.-11 for the State. Parties have exchanged the pleadings.

Counsel for the petitioner has submitted that under order dated 17.10.2012 passed by the respondent BHRC, the file was closed whereafter another application is said to have been filed by the



respondent no. 11 whereon the BHRC reviewed its previous order dated 17.10.2012, took up the case and issued notice under Section 16 of the Act calling upon the petitioner to file written defence. This is, in fact, review of the order which is not permissible in law as the Act does not provide such jurisdiction on the BHRC. Such power of review can be exercised if there is specific provision thereto in the Act. There is none. The proceeding taken thereafter by the BHRC and the orders dated 22.01.2013 (part of Annexure-9) and the final order dated 04.03.2013 (Annexure-13) are, therefore, bad in law. On merit, it has been submitted that the BHRC, under the scheme of the Act, has no jurisdiction to issue any direction. At best, on recording finding on the case, the BHRC can make recommendation to the State Government to take appropriate/needful steps/action in the light of the recommendation. It is next submitted that the petitioner has a right to defence. An opportunity was required to be given to prove the same by permitting the parties to adduce evidence. In support of his first contention, he has relied on **AIR 1987 SC 2186**. In support of his second contention, reliance has been placed on 2004 (2) PLJR 129(SC), order dated 25.11.2008 passed by the Delhi High Court in W.P.(M) No. 1130 of 2000 and the order dated 21.03.2013 passed by this Court in L.P.A. No. 1698 of 2012. Various provisions of the Act have also been referred to support his contention.



Per contra, the Additional Advocate General has submitted that the application is premature as the respondent State have not acted till date on the order of the BHRC inasmuch as no disciplinary proceeding and/or criminal case is/are taken or lodged against the petitioner. In this connection, he has also referred to the final order passed by the BHRC wherein the Senior Superintendent of Police, Patna was directed to consider initiating disciplinary proceeding and criminal case. It was a direction only to consider and not a command to initiate.

I shall deal with the first contention of the petitioner. Indisputably, the BHRC on a complaint lodged by respondent no. 11 called for some report from the S.D.P.O., Phulwarisharif on an application dated 06.06.2012 through the Senior Superintendent of Police, Patna. The report of the S.D.P.O. dated 06.09.2012 was forwarded to the BHRC by the Senior Superintendent of Police, Patna. Considering that the involvement of husband of respondent no. 11 was not established in Naubatpur P.S. Case No. 120 of 2012, the file was closed as the BHRC was not inclined to proceed in the matter and call upon the respondents by issuing notice under the Act. I have carefully perused the application dated 06.06.2012 (Annexure-4) filed by the respondent no. 11 in which a different grievance was raised by her. It related to the atrocities of her agnates on her family to capture



her ancestral property. While citing instances, reference of Naubatpur P.S. Case No. 120 of 2012 was also made. In the second application dated 28.09.2012 (Annexure-8) addressed to the BHRC, it was specifically alleged that the writ petitioner who was then functioning as the Sub-Inspector of Police was taken into connivance by her agnates and the aforesaid criminal case was lodged on fictitious recovery of the fire arms shown from the possession of her husband which led to his arrest and detention in jail custody and thus public humiliation. On perusal of the allegation, the BHRC was, prima facie, satisfied that a case of violation of human rights was made out and the BHRC was required to initiate an enquiry into the matter and accordingly, notice was directed to be issued under Section 16 of the Act to the writ petitioner. It is not a case where after making inquiry in which the writ petitioner against whom the allegation was made was associated, the proceeding was closed/dropped. For the first time, the BHRC on the second application of the respondent no. 11 decided to inquire into the matter and issued notice to the writ petitioner. It is, therefore, not a case where it can be said that the BHRC reviewed its order on merit. Review necessarily means or denotes rehearing of the matter which was earlier heard and disposed of in accordance with the Act. The word hearing means hearing both the parties. Reliance placed on *AIR 1987 SC 2186* appears inappropriate. It was rendered

in entirely different factual matrix. For the reasons noted above, the Court is not inclined to sustain the contention of the petitioner that the respondent BHRC reviewed its order dated 17.10.2012 by issuing notice subsequently to the petitioner, of course, in the same file on 22.01.2013 wherein the final order was passed.

The next contention of the petitioner is the BHRC did not follow the procedure prescribed under the Act and passed the final order. Instantaneously, it has also been argued that in the light of the provisions of the Act, the BHRC is empowered to inquire into the allegations as a Court of Enquiry to ascertain the facts and if the facts so ascertained constitute instances of breach of rights inherent in a human being as provided in the Act then to make recommendation to the State Government for taking remedial steps including granting compensation to the person aggrieved and taking disciplinary/judicial proceeding against the State functionary or even individual found responsible for such perpetration of the atrocities verging on the breach of human rights of the person aggrieved. This is the line which has also been taken by the Counsel for the State when it was submitted that the application is premature as nothing has been said in the writ application about lodging of the case and/or institution of departmental proceeding against the writ petitioner pursuant to the order of the respondent BHRC.

Provision of the Act relevant for consideration of the rival submissions shall hereinafter be examined.

Section 18(a) of the Act under the heading “**Steps during and after inquiry**” provides as under:-

“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 abetment 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.”

Section 18(b) thereof gives the BHRC power to approach the Supreme Court or the High Court for such directions, orders or writs.

Section 18(c) provides for making recommendation to the concerned Government or authority at any stage of the inquiry for grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary. Section 18(e) obligates the Government or the authority of the Government to forward its comment on the report including the action taken or proposed to be taken thereon to the Commission. Section 16 of the Act provides the

manner of inquiry to be conducted by the BHRC. A limited inquiry is to be made in which reasonable opportunity of being heard is to be given.

It does not appear from the written statement that any request was made by the petitioner permitting him to produce evidence in his defence. The petitioner, therefore, cannot be heard complaining non-grant of opportunity by the BHRC to adduce evidence in his defence. He was afforded an opportunity of hearing.

In *N.C. Dhoundhial versus UOI and Ors. (2004) 2 SCC 579*, the Hon'ble Supreme Court while dealing with the proceedings of the National Human Rights Commission in paragraph 14 held as follows:-

“14.The Commission which is an “unique expert body” is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. On course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved

persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.”

It is further seen from the records that the writ petitioner found respondent no. 12 guilty of the offence punishable under the Arms Act whereas the Investigating Officer found it otherwise. The case was found true against other accused persons not named in the F.I.R. and untrue against the husband of the petitioner. The judicial inquiry into the case pending trial is yet to reach its finality and the verdict of the Court is awaited. What has happened at the trial of the case of Naubatpur P.S. Case No. 120 of 2012 has not been placed before the Court. An obnoxious situation may arise if the Trial Court holds the sent up accused for trial not guilty of the offence. That may vindicate the case of the petitioner.

Mr. Keshri has also taken the same stand before this Court when it was submitted that the writ application is premature as, till date, the State Government have not acted on the order/recommendation of the BHRC inasmuch as neither the departmental proceeding nor judicial inquiry has been initiated against the writ petitioner. He has heavily relied in support of his contention on an unreported order dated 27.8.2010 passed by the Madras High Court in W.P. Nos. 21604 to 21607 of 2000 wherein, on analyzing the



relevant provisions of the Act and juxtaposing those provisions with the provisions of the Commissions of Inquiry Act, it was held that the application challenging the order of the Human Rights Commission is highly premature. Paragraph 36 of the order is reproduced hereinbelow:-

“Proceeding further the Hon’ble Supreme Court has held that there may be occasions where after consideration of report the Government may not decide to take any action against the person concerned yet the observation and remarks may be such which may play upon the reputation of the person concerned. Therefore, in that case the Hon’ble Supreme Court held that since reputation of the individual is involved, he can challenge even the report submitted without waiting for the final decision of the Government. That was an exceptional circumstance. In the cases on hand, it is not at all the case of the petitioner that the report of the State Human Rights Commission, in any manner, is likely to cause injury to his reputation. Thus, appropriate final stage has not yet reached for the petitioner to make any challenge. He may wait till final decision is taken by the Government on the report. Thus, the present writ petitions are highly premature.”

In reaching the said conclusion, the Madras High Court relied on the *T.T.Antony vs. State of Kerala (2001) 6 SCC 181* wherein in the context of the facts finding report of the Commission of Inquiry under the Commissions of Inquiry Act, it was observed that the report was meant for information to the Government of an existing state of affairs.

Counsel for the respondent nos. 11 and 12 has, however supported the impugned order contending that the Commission is

entitled to make inquiry and take action against the persons found guilty which may either be individual or the State Authority. The only requirement is the satisfaction of the BHRC in the enquiry that by the misdeeds of the persons complained against the human rights of the individual has been infringed/violated. The human rights of a person are of diverse nature which the Commission is obliged to consider in the setting of the facts of the case.

Having given anxious considerations to the rival contentions, this Court finds no difficulty in view of the submissions of the party that the order of the BHRC, in essence, be construed as the recommendation of the BHRC to the Government for taking remedial/needful action(s) against the persons found responsible for the breach of the valuable human rights of the complainant. As nothing has been shown that the remedial/needful step/action is taken on such recommendation by the respondent State, the application is held premature and disposed of as such.

No order as to cost(s).

(Kishore Kumar Mandal, J)

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