

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.01.2016

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

W.P.No.25614 of 2010

Sankar

.... Petitioner

versus

1.The Member,
State Human Rights Commission Tamil Nadu
No.143, P.S.Kumaraswamy Raja Salai,
(Greenways Road)
Chennai 600 028.

2.State of Tamil Nadu
represented by the Chief Secretary
to Government
Fort St.George, Chennai 600 009.

3.P.Pulikumar

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorari, calling for the records of the first respondent in SHRC Case No.1059 of 2004 order dated 9.4.2010 and quash the same.

For Petitioner :::Mr.S.Sairaman.

For Respondents :::Mr.R.Srinivas for R.1

Mr.S.T.S.Murthi
Government Pleader assisted by
Mr.V.R.Kamalanathan AGP
Mr.V.Shanmugasundar
Government Advocate for R.2.

Mr.J.Saravanavel for R.3

O R D E R

(The Order of the Court was made by The Hon'ble The Chief Justice)

In the present petition filed under Article 226 of the Constitution of India, we are confronted with a situation where the order of the State Human Rights Commission, Tamil Nadu,

dated 09.04.2010 has been assailed, which recommended to the Government of Tamil Nadu to make payment of Rs.20,000/- to the complainant/respondent No.3 towards compensation for violation of human rights by the petitioner before us and to recover the same in instalments. The second part of the direction required the Director General of Police, Chennai to take a serious view and initiate necessary departmental proceedings against the petitioner/ Special Sub Inspector of Police for detaining the complainant unnecessarily during night hours.

2. In a nutshell, the story of the complainant is that he was standing near his house on 06.07.2003 at about 11.00 p.m., when five persons came in two police Jeeps (only one was in uniform). Some enquiry was made from him and he was made to sit in the Jeep. It was the say of the complainant that abusive language was used and it was put to him that he was buying and selling stolen articles and was responsible for the theft that took place in and around that area. The petitioner is alleged to have driven the Jeep and slapped the complainant twice on his left cheek, asking him to tell the truth. His driving license and cash was also taken away, but finally he was taken to the police station, where he spent the whole night, suffering acute ear pain. On 07.07.2003 at 7.30 a.m., he was informed by the petitioner that a mistake had been committed and he was not at fault and asked to forget as to what had happened on the previous day. The Sub-Inspector also concurred with the same.

3. The Police, of course, had its own story, but after recording the testimony of witnesses, the findings were arrived at in favour of the complainant. The findings were also based on the medical testimonies that there was traumatic perforation on the complainant's left ear, for which treatment was prescribed.

4. The petitioner rushed to the court and obtained an interim order against the recovery from him. This order was passed on 12.11.2010. The surprising part is that despite there being no stay of the requirement of the State Government to pay the amount to the third respondent/complainant and the interim orders specifically stating that there would be an interim stay regarding the recovery alone, still the amount has not been paid to the third respondent. Thus, the State Government has not acted on the recommendations of the State Human Rights Commission to make the payment, though an enquiry was held against the petitioner. The interim order has been used as a pretext not to pay the third respondent.

5. In so far as the disciplinary proceedings against the petitioner are concerned, the order passed by the competent authority on 06.10.2012 produced before us today show that while the Deputy Commissioner of Police has imposed the punishment of

postponement of his increment for three years without cumulative effect on 23.07.2012, the Commissioner of Police, Tirunelveli City modified it to one of postponement of increment for one year without cumulative effect. This power was exercised as suo moto review power as no appeal had been preferred against the original order. This modified order has been accepted by the petitioner.

6. The natural consequence of the aforesaid is that it can be conveniently implied that the State Government has accepted the recommendations, as otherwise there would have been no other occasion to initiate the departmental proceedings against the petitioner. However, the second aspect has not been honoured, of making payment of Rs.20,000/- to the third respondent.

7. We are thus of the view that there can hardly be anything to be urged by the petitioner in the present writ petition in the aforesaid circumstances.

8. As far as the third respondent is concerned, he has been deprived of the benefit of Rs.20,000/-, which was to be paid to him as damages when the order was passed, and the operation of that order dated 09.04.2010 was never stayed except to the extent of making recovery from the petitioner. We are thus equally of the view that it is a fit case where apart from compensation granted by the State Human Rights Commission, this Court should grant some element of interest for depriving the third respondent of the money payable to him.

9. Learned counsel for the State Government states that the amount will be paid within 15 days. We call upon the State Government to pay simple interest at the rate of 6% per annum on this amount from the expiry of eight weeks from the date of the order assailed (time granted as per the impugned order) till the date of payment. If there is any further delay in payment of the amount, the interest amount payable would be 9% per annum for the period of delay. The interest amount to be paid to the third respondent would, however, not be recoverable from the petitioner, as that is clearly a result of the fault on the part of the State Government in keeping the issue pending, misconstruing the order of interim injunction.

10. Coming to the larger issue raised by the learned counsel for the first respondent, the State Human Rights Commission, it is stated that the aggrieved parties, from the recommendations of the State Commission, are rushing to court and obtaining stay orders, even though the scheme of the Protection of Human Rights Commission Act, 1993, envisages that the recommendations have to be sent to the Government concerned together with the enquiry report and the Government in turn, has to act within a period of one month on receipt of the same. There is no doubt on the

issue of the power of the State Human Rights Commission to make recommendations or grant interim relief. Learned counsel, thus, submits that the occasion to approach this Court really should not arise, except post the action taken by the State Government on the recommendation of the State Human Rights Commission.

11. Learned counsel for the third respondent in fact relies on a Judgment of the learned Single Judge of this Court in *Rajesh Das, I.P.S vs. Tamil Nadu State Human Rights Commission, Chennai* reported in (2010(5) CTC 589), where after discussing the same issue, the ratio is summed up in paragraph-41 as under:

''41.To sum up:-

(i) What is made under Section 18 of the Protection of Human Rights Act by the State Human Rights Commission is only a recommendation and it is neither an order nor an adjudication.

(ii) Such a recommendation made by the State Human Rights Commission is not binding on the parties to the proceeding, including the Government.

(iii) But, the Government has an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objects of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution within a reasonable time.

(iv) In the event of the Government tentatively deciding to accept the recommendation of the State Human Rights Commission holding any public servant guilty of human rights violation, the Government shall furnish a copy of the report of the Commission to the public servant concerned calling upon him to make his explanation, if any, and then pass an appropriate order either accepting or rejecting the recommendation of the Commission.

(v) Until the final order is passed by the Government on the recommendation of the Commission, neither the complainant(s) nor the respondent (s) in the human rights cases can challenge the recommendation of the commission as it would be premature except in exceptional circumstances. (emphasis supplied)

(vi) On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for

investigation by police which will culminate in a final report under Section 173 of the Code of Criminal Procedure.

(vii) On the recommendation of the Human Rights Commission, if the Government decides to pay compensation to the victims of human rights violation, the Government may do so. But, if the Government proposes to recover the said amount from the public servant concerned, it can do so only by initiating appropriate disciplinary proceeding against him under the relevant service rules, if it so empowers the Government.
(emphasis supplied)

12. We are in complete agreement with the views expressed by the learned single Judge on this aspect which should be kept in mind in future proceedings seeking to assail the order of the State Human Rights Commission especially when the decision of the State Government post the recommendation is awaited.

13. We thus dismiss the writ petition with the aforesaid observations/directions, leaving the parties to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(III)

//True Copy//

Sub Assistant Registrar

ksr

1.The Member, State Human Rights Commission Tamil Nadu
No.143, P.S.Kumaraswamy Raja Salai,
(Greenways Road), Chennai 600 028.

2.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai 600 009.

+1cc to M/s. J. Saravananvel, Advocate, S.R.No.4667
+1cc to M/s. R. Srinivas, Advocate, S.R.No.4747
+1cc to the Government Pleader, S.R.No.5121
+1 cc to M/s. S. Sairaman, Advocate SR.4623

VD(CO)
EU(11/02/2016)

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