

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.36022 of 2016

and

W.M.P.No.30961 & 30962 of 2016

M.Kamalakannan

.. Petitioner

-vs-

1.Member,

State Human Rights Commission Tamil Nadu,
"Thiruvaram", No.143,
P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai-600 028.

2.Vinoth Kannappan

3.S.Mohan

Inspector of Police,
Ooty Town Central Police Station.

4.Y.Lawrence, H.C.,

Ooty Town Central Police Station.

5.N.Moorthy, H.C.,

Ooty Town Central Police Station,
Ooty.

6.C.Rajadurai,

Inspector of Police,
Armed Police, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the first respondent in S.H.R.C.No.9840 of 2008, dated 28.01.2016 and quash the same.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.M.K.Subramanian
Govt. Pleader

* * * * *

O R D E R

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

The petitioner, inter alia contends that though enquiry was completed in the month of November, 2011, the impugned order has been passed only on 28.01.2016. The impugned order is in the nature of recommendation to the State Government. The State Government has yet not taken decision to implement it or not.

2. The question whether in such a situation, the writ petition under Article 226 of the Constitution of India is to be entertained or not has been examined by the First Bench of this Court, of which one of us (Sanjay Kishan Kaul, CJ was a member) in W.P.No.25614 of 2010 (Sankar v. The Member, State Human Rights Commission Tamil Nadu, No.143, P.S.Kumarasamy Raja Salai, Greenways Road, Chennai-600 028) decided on 27.01.2016, reported in 2016 SCC OnLine Mad 42, where it has been observed as under:-

"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.

3. We, thus, dismiss the writ petition with the aforesaid observations/directions, leaving the parties to bear their own costs. Consequently, W.M.P.Nos.30961 & 30962 of 2016 are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

bbr
To

The Registrar
State Human Rights Commission Tamil Nadu,
"Thiruvarangam",
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai-600 028.

+1 cc to the Mr.M.Ramalingam counsel for the Petitioner
sr 58391

+1 cc to the Government Pleader sr 582523

W.P.No.36022 of 2016

aa24/10/2016