

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 700 OF 2017

The Chief Secretary and another. ...Petitioners

Versus

The Goa Human Rights Commission through its Secretary and another. ...Respondents

Mr Dattaprasad Lawande, *Advocate General with Ms P Bhandari,*
Additional Govt Advocate for the petitioners.

Mr Aires Rodrigues, *Advocate, Respondent No.2 in person.*

CORAM: G.S. PATEL
NUTAN D. SARDESSAI, JJ

DATED: 21st August 2017

PC:-

1. The petition is filed by the Chief Secretary of the State of Goa and the Director General of Police against the Goa Human Rights Commission (“GHRC”) and Mr Aires Rodrigues, an Advocate of this Court. Mr Rodrigues was an applicant before the GHRC. He complained that during the two-day BRICS summit in 2016 in Goa, police personnel deployed during that period were being made to work for long hours, without proper or hygienic food, potable water or toilet facilities. Mr Rodrigues brought before the GHRC several issues that, according to him, required to be addressed.

2. We are not in this petition concerned with the merits of that cause. The complaint in the petition is *inter alia* about the manner in which the GHRC went about its business, especially when it had before it the highest functionary of the State, the Chief Secretary. Particular reference is made to the wording of two orders at Annexures F and G, pages 57, 58-59 respectively. The complaint is that the language used is needlessly derisive and inappropriate. It is submitted that these orders are *ex facie* unlawful and outside the procedure provided in the Protection of Human Rights Act, 1993 (“**the Human Rights Act**”). There is a jurisdictional challenge. This is on the footing that the GHRC has issued directions when its only powers are to make recommendations. There is an explanation offered in the petition itself as to why the Chief Secretary was not himself able to attend on one particular day.

3. Two things stand out in all of this. First, that in every single order of the GHRC, including those two described above, a retired District Judge appointed to that Commission describes himself as the Chairperson. He cannot be. At the best, he may hold the post for the period that a chairperson is not appointed and may discharge the functions of a Chairperson. He most certainly cannot describe himself as one. This is important from any number of perspectives; for one thing, it sends out the wrong signal to the public.

4. Second, and of very serious concern to us is the language used by the GHRC in its orders, including the two orders to which we have referred. An affidavit filed by the Chief Secretary is described in Annexure E at 56 as “*a so-called reply*”. Annexure F contains a mandatory direction to the Chief Secretary to conduct an

inquiry and fix responsibility as if the matter had already been concluded. Curiously, the next order at Annexure G then speaks of an investigation, not an inquiry, but on the next page once again speaks of an inquiry and not an investigation. An investigation and an inquiry are distinct matters in law, and require to be dealt with very differently. That distinction is known generally in criminal law, administrative law and more particularly under the Human Rights Act, in which Sections 14 and 17 draw a distinction between the two. The Chief Secretary was, therefore, completely justified in seeking a clarification.

5. We are also unable to appreciate why the Chief Secretary's personal presence was thought necessary at every single hearing before the Commission. We note that the Chief Secretary is the 1st Respondent in about 90% of the petitions filed before us. Were we to require his personal attendance in every single matter, he would be wholly unable to function and his official functioning reduced to total paralysis.

6. The Commission's present Members would do well, in our view, to remember that all law is a discourse, and the discourse of law is the discourse of civility. We do not request this of tribunals and courts within our jurisdiction; we demand it. If civility is lost in courts of law, then all is lost.

7. Prayer (a) asks that the Proceeding No.273/16 be quashed. We are not inclined to quash the entire proceeding. We will, however, set aside the orders of 14th March 2017, 18th April 2017

and 17th July 2017, respectively Exhibits E, F and G to the petition. As regards the 18th October 2016 order at Exhibit D at page 48, we will proceed on the footing that these are *prima facie* observations and not conclusions. The GHRC is requested to proceed accordingly. The GHRC is also requested to make it clear whether it recommends an inquiry or an investigation. While doing so it should be careful to specify the parameters and scope of either, so that the controversy is not needlessly enlarged. The GHRC is requested, thereafter, to make its recommendatory report in the manner set out and required by the Human Rights Act.

8. The petition is disposed of in these terms. There will be no order as to costs. All contentions are specifically left open.

NUTAN D. SARDESSAI J.

G. S. PATEL J.