

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4225 OF 2013

All Maharashtra Human Rights
Welfare Association and Anr.

... Petitioners

Vs.

Torrent Power Ltd. and Ors.

... Respondents

Mr. Momin Mohd. Faruk Nasir for the Petitioners.

Mrs. Deepa Chavan i/by Ms. Reshmarani J. Nathani for the Respondent
No.1.

Mr. Kiran Gandhi a/w Mr. Nirav Shah and Mr. Anuj Jaiswal i/by Little &
Co. for the Respondent No.2.

Mr. Manish M. Pabale, AGP for Respondent Nos.3 and 4.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 5th MAY, 2017

PC.

1 By order dated 19th September, 2016 this Court directed that the Petition shall be disposed of finally at the stage of admission. By this Petition under Article 226 of the Constitution of India, the petitioners have taken an exception to the Judgment and Order dated 30th November, 2011 passed by a Bench of the Maharashtra State Human Rights Commission.

2 The first respondent – Company is a distribution Franchisee appointed by the second respondent – the Maharashtra State Electricity Distribution Company Limited (MSEDCL) for supply of electricity in the area of Bhiwandi. A complaint was filed by the petitioners before the Maharashtra State Human Rights Commission alleging violation of human rights on the part of the first and second respondents. The allegation made in the complaint is that there were many fatal and non-fatal accidents due to electric shocks which have taken place after appointment of the first respondent. Reliance is placed on Exhibits - A and B to the said complaint. The said exhibits contain lists of fatal and non-fatal accidents which occurred between 26th January, 2007 to 2nd August, 2010. It is alleged in the complaint that the lists have been prepared on the basis of information obtained under the Right to Information Act, 2005. Reliance is also placed on panchanama drawn by the police. Names of 8 persons have been set out by alleging that they have died as a result of electric shock for which Electrical Inspector has held the first respondent responsible. It is alleged that there may be numerous cases of such deaths after 1st September, 2012. Various allegations have been made about the manner in which the first respondent is carrying out the work. It is alleged that balance sheet of the first respondent shows that large donations have been made by the first respondent to various political parties and that is the reason why

the State Government is not taking any action against the first respondent for violation of human rights. The first prayer in the complaint was for seeking an enquiry at the hands of the State Human Rights Commission. There are prayers made directing payment of compensation to each and every victim as well as for initiation of criminal proceedings.

3 The first respondent contested the complaint by filing an affidavit in reply of Shri.Narendra Mahavir Prasad Agarwal. Each and every allegations made in the complaint was contested.

4 In the impugned order, the first finding recorded by the Human Rights Commission is that the complaint can be entertained by the said Commission and dealt with in accordance with law. Thereafter, a conclusion has been recorded that in view of the law laid down by this Court in the case of *State Of Maharashtra vs. Shobha Vitthal Kolte and Ors.*¹, the Petitioners have to pursue proper remedy. In clause 5 of the order, it is recorded by the Commission that the learned counsel representing the first respondent made a statement that the first respondent has already paid compensation to the victims or their heirs. The Commission rejected the argument that the quantum of compensation offered was insufficient. In clauses (vi) and (vii), the Human Rights Commission has observed thus :-

1. AIR 2006 Bom 44

“(vi) Read the report received by Dy Commissioner of Police (Bhiwandi Division), Bhiwandi on behalf of Respondent No.4. The Report shows that the Police have registered Accident Death Case (AD Case) in each and every matter, investigated the matter and in the last submitted summary to their Authority. Thus, Police have taken proper action in this matter and calls for no adverse remarks. The Commission is not sitting in Appeal against the decisions of Authority, to whom Police submitted summary for passing orders. In other words, the decisions taken by the Authority on summary cannot be challenged before Commission.

(vii) For all these reasons we are of the opinion that, any further intervention by the Commission in this matter is not necessary. At the same time, it is incumbent upon Respondent No.1 and 2 to take all the necessary care to avoid such accident and see that no such unpleasant incident is repeated in future. The Commission hopes and trust that Respondent No.1 and 2 would take all the necessary care to avoid such accident.

With these observations Case No.1306/2011-12 is disposed of accordingly.”

5 By order dated 23rd February, 2017, a Division Bench of this Court directed that the State Government shall place on record the data in respect of incidents occurring within the Bhiwandi area after appointment of the first respondent as a Franchisee. A direction was

issued to the State Government to make an endeavour to inform the Court as to whether there is any increase in accidents after the appointment of the first respondent. Comparative data of such incidents prior to the appointment of the Franchisee and after the appointment was ordered to be made available to the Court. In terms of the directions issued under the said order, now an affidavit has been filed on 4th May, 2017 by the Inspector of Police, Bhiwandi City Police Station in which necessary data is set out and the reports submitted by the officers of the Police and copies of the FIRs have been annexed.

6 The main opposition of the learned counsel appearing for the first respondent is on the ground that even the data placed on record of this Court by the first respondent as well as the second respondent will show that there is no violation of Human Rights on the part of the first respondent. It is pointed out by her that the first respondent undertook a challenging work in an area which was very well known for large scale thefts and unauthorised use of electricity. She pointed out that earlier, the electricity was supplied in Bhiwandi area through high density distribution cables. Subsequently, the first respondent undertook the challenging work of laying underground electricity cables which was completed in the year 2012. She submitted that on plain reading of the complaint, the same does not deserve to be entertained considering the nature of the prayers made therein. She

pointed out that the allegation made that 8 persons died due to electric shock is found to be factually incorrect as 2 out of 8 persons named by the petitioners are very much alive. Her submission is that even going by the data which is on record between the period from 26th January, 2001 to 30th June, 2011 out of 235 First Information Reports (FIRs) recorded in respect of cases of persons dying due to electric shocks, only 2 FIRs have been registered against the first respondent. It is pointed out by her that in the period between 1st July, 2011 to 21st March, 2017 out of 100 FIRs registered, not a single case is registered against the first respondent. Her submission is that not even a prima facie case is made of any violation of human rights on the part of the first respondent. Her submission is that when there is no sufficient material placed on record of this Petition to show that the first respondent is responsible for any of the deaths resulting from electric shock, no interference is called for.

7 We have given careful consideration to the submissions. We have perused the complaint filed by the petitioners before the Human Rights Commission and the reply filed by the first respondent before the Human Rights Commission. According to the case of the petitioners, during the period from 26th January, 2007 upto 2nd August, 2010, there were cases of fatal accidents due to electric shock and there were cases

during the same period of non-fatal accidents due to electric shock. The allegation is that incidents are the product of negligence on the part of the first respondent which amount to violation of human rights. It is alleged that as far as incidents listed in Exhibits - A and B are concerned, the Electrical Inspector held the first respondent responsible for the accidents. Though clause (C) of paragraph 7, it is alleged that 8 persons have died, it is subsequently revealed that 2 persons out of the 8 persons named therein are alive. The allegation in the complaint is that the Electrical Inspector has held the first respondent responsible for the mishaps. Reliance is also placed on the Electrical Inspector's Report recording poor condition of the network maintained by the first respondent. The allegation is that while undertaking the underground cabling work, at some places, the first respondent has not even dug any trenches. At many places, lines are passing through gutters. The averments made in the complaint have been controverted by the first respondent by filing a detailed reply.

8 In clause (i) of paragraph 8 of the impugned order, the Human Rights Commission has dealt with the issue of jurisdiction raised by the first respondent. It will be necessary to note the finding recorded by the Tribunal on this aspect :-

“(i) At the same time it is necessary to mention

that number of persons lost their life or got injured in such incidents due to electric shock. There cannot be any difference of opinion on the point that, it amounts to violation of human rights, if negligence etc on the part of other side is proved. Moreover, the Apex Court in the case reported in 2011 Cri. L.J. 1985 (Ramdeo Chauhan alias Rajnath Chauhan Vs. Bani Kant Das & Ors.) jurisdiction of NHRC under section 12(i) is enlarged. In such circumstances, we are of the opinion that this petition can be entertained and dealt with according to law.”

9 In clause (ii) of paragraph 8, the Commission observed that there cannot be any dispute that fatal and non-fatal accidents as mentioned in the lists reproduced have taken place due to electric shock and the first respondent is therefore prima facie responsible for the same. In clause (iii) of paragraph 8, it is observed that it is not proper for the Commission to go deep into the issue of agreement and to record the findings. Further, it is observed that the first respondent invested and spent huge amounts on the improvement of their infrastructure and therefore, while considering the issue of liability, this aspect cannot be ignored. It was observed that it will be wrong to say that the first respondent was all the while negligent. At the same time, the Commission observed that it was expected of the first respondent to take “that much care” which was required to be taken to avoid such

incidents. While dealing with the submission of the petitioners that the employees appointed by the first respondent are not qualified, the Commission has recorded a finding that the Commission cannot deal with and decide the service matters. In clause (iv), the Commission refers to the case made out that the Electrical Inspector, after holding inquiry has held the first respondent responsible for the incidents. Surprisingly, the Commission has observed that when the inquiry in this matter was held by the Electrical Inspector (the Authority competent to hold such inquiry), the same matter cannot be again agitated before the Commission. Here, the Commission completely ignored the legal effect of the fact that according to the case of the petitioners, the Electrical Inspector had held the first respondent responsible for the electric shocks which resulted into injuries or loss of lives. In the same clause (iv), the Commission refers to sub-clause (i) of clause (a) of Section 12 of the Human Rights Act, 1993 and holds that the petitioners have to make out a case of violation of human rights. In clause (v), the Commission accepts the statement of the learned counsel appearing for the first respondent that compensation has been paid to the victims or their heirs as a gospel truth and thereafter, refuses to go into the question of adequacy of the compensation. Clause (vi) of paragraph 8 reads thus :-

“(vi) Read the report received by Dy Commissioner of Police

(Bhiwandi Division), Bhiwandi on behalf of Respondent No.4. The Report shows that the Police have registered Accident Death Case (AD Case) in each and every matter, investigated the matter and in the last submitted summary to their Authority. Thus, Police have taken proper action in this matter and calls for no adverse remarks. The Commission is not sitting in Appeal against the decisions of Authority, to whom Police submitted summary for passing orders. In other words, the decisions taken by the Authority on summary cannot be challenged before Commission.”

10 It appears from the impugned order that the Commission has not gone through the ADR reports and final reports filed on record. The Commission has only relied upon the report of the Deputy Commissioner of Police. Without examining the case papers of the cases on which the petitioners were relying upon, a certificate is given that the Police have taken proper action in the matter. It is observed that the Commission cannot sit over in Appeal against orders passed on the summaries. It is not clear from the findings recorded by the Human Rights Commission as to in which cases which category of summary was filed by the Police and whether any orders were passed by the learned Magistrates on the final reports. In clause (vii), it is observed that for reasons recorded, no further intervention of the Commission is necessary and the complaint is disposed of by observing that it is

incumbent upon the first and second respondents to take all necessary care to avoid such cases.

11 After having perused the impugned order and after making its careful scrutiny, we are constrained to observe that the Human Rights Commission has dealt with the complaint in a cursory manner and has made no fact finding inquiry. In fact, the findings recorded by the Commission are far from being satisfactory. A grievance was made that one of the reasons for the accidents was the failure of the first respondent to employ qualified technical persons. The said contention is brushed aside by holding that the Commission cannot deal with the service matters. There is nothing to indicate from the impugned order that the Commission took pains to peruse the record of the FIRs on the basis of which the petitioners had made grievances.

12 When the Human Rights Commission which is entrusted with the sensitive functions deals with the complaint in such a cursory manner, a Writ Court is not expected to go into the record of the cases and record factual findings, on the question whether there was a violation of human rights. The entire fact finding enquiry ought to have been made by the Human Rights Commission.

13 The data produced along with the affidavit tendered today is not sufficient to accept the case made out by the first and second respondents. It only gives data of the FIRs registered. The data may indicate that only in two FIRs, the first respondent is named as accused. However, what is necessary to be seen is the investigation papers and the ultimate conclusion drawn by the Police regarding the role of the first respondent. The data shows that at least two cases have been registered against the officers of the first respondent in the year 2008-2009 alleging commission of an offence under Section 304A read with Section 34 of the Indian Penal Code.

14 Therefore, in our considered view, the order of the Human Rights Commission cannot be sustained at all. There is no option but to pass an order of remand so that proper inquiry is held by the Commission.

15 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 3rd December, 2011 is hereby quashed and set aside and Case No.1306/2011-12 is remanded to the Maharashtra State Human Rights Commission for fresh inquiry and hearing;

- (ii) The Maharashtra State Human Rights Commission shall permit the parties to produce further documents and affidavits on record including the copies of the documents and affidavits which are placed on record of this Writ Petition;
- (iii) After giving an opportunity of being heard to all concerned parties and after holding necessary inquiry, the Human Rights Commission shall decide the complaint as expeditiously as possible;
- (iv) We make it clear that we have made no adjudication on any factual controversy required to be dealt with by the Maharashtra State Human Rights Commission and all contentions of the parties are kept open;
- (v) All concerned to act upon an authenticated copy of this order;
- (vi) Petition is disposed of on above terms.

(A.K. MENON, J)

(A.S. OKA, J)