

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.Nos.7204 and 7205 of 2017

K.Govindarajan ... Petitioner in
WP:7204/2017

N.Pradeep Kumar ... Petitioner in
WP:7205/2017

Vs.

1 The Assistant Registrar
State Human Rights Commission
Chennai.

2 The Principal Secretary to Government
Home Department
Government of Tamil Nadu
Chennai.

3 The Conservator of Forest
Vellore Range, Vellore - 9.

4 The District Forest Officer
Vellore Division, Vellore - 9.

5 Samshud Begum
6 Munusamy

7 Peoples Watch NGO
No.6, Vallabai Road
Chokkikulam, Madurai.

... Respondents
in both Petitions

PRAYER: Petitions filed under Article 226 of the
Constitution of India for issuance of writ of Certiorari
calling the entire records in respect of the order passed
by the State Human Rights Commission dated 16.08.2016 in
S.H.R.C Nos.1893, 1894 and 5746 of 2007 and quash the same.

For Petitioners : Mr.D.Rajagopal

For Respondents : Mr.R.Prathap Kumar
Panel Advocate
for 1st respondent

Mr.M.K.Subramanian
Government Pleader
for 2nd respondent

Mr.M.Santhanaraman
Spl. Govt. Pleader (Forests)
for respondents 3 and 4

COMMON ORDER

(Order of the Court was made by the Acting Chief Justice)

Mr.R.Prathap Kumar, Panel Advocate takes notice for the first respondent. Mr.M.K.Subramanian, learned Government Pleader takes notice for the second respondent and Mr.M.Santhanaraman, learned Special Government Pleader (Forests) takes notice for respondents 3 and 4. Notice to respondents 5 to 7 is dispensed with.

2. The petitioners have filed these writ petitions seeking issuance of writ of Certiorari calling the entire records in respect of the order passed by the State Human Rights Commission dated 16.08.2016 in S.H.R.C Nos.1893, 1894 and 5746 of 2007 and quash the same.

3. Respondents 5 to 7 filed complaints before the State Human Rights Commission alleging that one Taj Sheriff (husband of the fifth respondent) was subjected to mental agony by the petitioners herein and two others, who are all officials of the Forest Department, by acts of physical torture and by virtue of the same, he committed suicide on 13.2.2007.

4. The State Human Rights Commission, by order dated 16.8.2016, recommended the State Government to pay a sum of Rs.2,40,000/- to the complainants and recover the same from the petitioners herein and two other officials of the Forest Department. Assailing the same, the present writ petitions are filed.

5. The learned Special Government Pleader (Forests) appearing for respondents 3 and 4 submitted that these writ petitions are premature inasmuch as the State Human Rights

Commission has only made a recommendation to the State Government and it is neither an order nor an adjudication. It is pleaded that unless and until such recommendation is accepted by the Government and a final order is passed, the petitioners cannot challenge the recommendation of the State Human Rights Commission. In support of the said plea, he placed reliance on a decision of this Court in Sankar v. The Member, State Human Rights Commission Tamil Nadu, (Order dated 27.1.2016 passed in W.P.No.25614 of 2010), wherein it was observed as under:

"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.

(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.'"

6. On hearing the learned counsel for the parties and taking note of the fact that the Forest Department has already taken cognizance of the recommendation made by the State Human Rights Commission, we are of the view that these writ petitions are premature, as the petitioners have to await the order to be passed by the Government based on such recommendation made by the State Human Rights Commission.

For the foregoing reasons, these writ petitions are premature and are accordingly disposed of. No costs. Consequently, W.M.P.Nos.7829 to 7832 of 2017 are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sasi

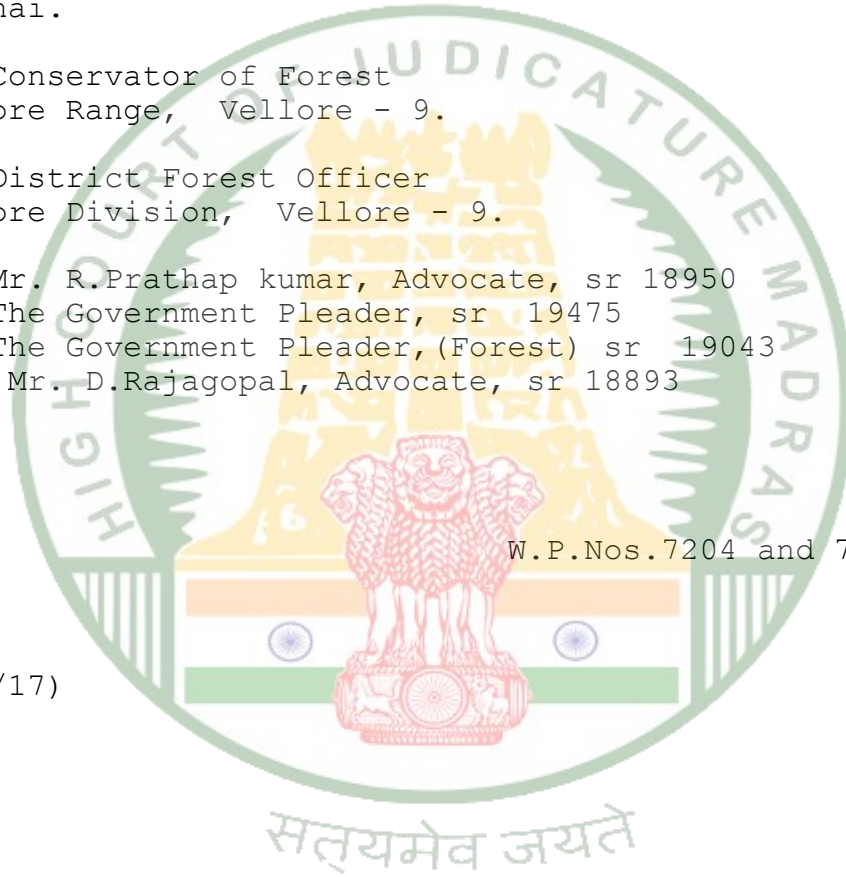
To:

- 1 The Assistant Registrar
State Human Rights Commission
Chennai.
- 2 The Principal Secretary to Government
Home Department
Government of Tamil Nadu
Chennai.
- 3 The Conservator of Forest
Vellore Range, Vellore - 9.
- 4 The District Forest Officer
Vellore Division, Vellore - 9.

+1 cc to Mr. R.Prathap kumar, Advocate, sr 18950
+1 cc to The Government Pleader, sr 19475
+1 cc to The Government Pleader, (Forest) sr 19043
+2 ccs to Mr. D.Rajagopal, Advocate, sr 18893

W.P.Nos.7204 and 7205 of 2017

kk(co)
rmp(11/04/17)



WEB COPY