

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.M.P.No.18465 of 2017
and W.A.(SR)No.80613 of 2017

State Human Rights Commission
rep. by its Secretary,
No.143, P.S.Kumarasamy Raja Salai,
Chennai-600 028. ... Petitioner/Appellant

Vs.

1. E.Natesan
2. Government of Tamil Nadu
Rep. by its Secretary,
Home Department, Secretariat,
Fort St. George,
Chennai-600 009.
3. The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai-600 008.
4. The Inspector of Police,
R-3 Police Station,
Ashok Nagar, Chennai. ... Respondents/Respondents

Prayer : Civil Miscellaneous Petition filed under Section 151 of CPC to permit the petitioner to file writ appeal as third party appellant, as against the order passed in W.P.No.17041 of 2004, dated 08.09.2017.

Prayer in L.A. SR: Appeal filed under Clause 15 of Letters patent against the order of the Hon'ble Court dated 08.09.2017 made in W.P. No 17041/2004.

Prayer in W.P. No 17041/2004:

Petition filed under Article 226 of the constitution of India, to issue a Writ of Mandamus to direct the respondents to pay the Petitioner, Jointly and severally a compensation of any amount that the court may deem it fit and proper.

For Appellant : Mr.K.V.Sajeev Kumar

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an application filed by the State Human Rights Commission (in short, "the Commission") to seek leave to appeal against the judgement dated 08.09.2017, rendered by the learned Single Judge in W.P.No.17041 of 2004. The said writ petition was filed by, one, Mr.E.Natesan.

1.1. Via the said writ petition, Mr.Natesan sought compensation, on the ground that his son, one, Mr.Kumaresan, allegedly, died, while, he was in police custody.

2. The learned Single Judge, however, disposed of the said writ petition with a direction to the Commission to enquire into the matter. The official respondents, who were parties to the writ petition, had, in fact, taken up the very same plea, which has been advanced before us by the Commission, which is that, no such direction could be issued, in view of the provisions of Section 36(2) of the Protection of Human Rights Act, 1993 (in short, "the 1993 Act").

2.1. The learned Single Judge has repelled arguments advanced in that behalf and held that the Commission could be directed to enquire into the matter, by relying upon two (2) judgements of the Supreme Court rendered in : Paramjit Kaur V. State of Punjab and others, (1999) 2 SCC 131 and N.C.Dhoundial V. Union of India and Others, (2004) 2 SCC 579.

3. Before we proceed further in the matter, the following brief facts are required to be noticed :

3.1. The record shows that the petitioner's son, one, Mr.Kumaresan, along with his sibling Mr.Saravanan, was picked up by the police. They were arrested on 24.08.1991. The record shows that Mr.Kumaresan died in police custody on 25.08.1991.

3.2. The petitioner claims that he received information from a constable attached to the Ashok Nagar Police Station, Chennai, that his son had died in mysterious circumstances, while, he was in police custody.

3.3. It is this information, which led the petitioner to approach this Court, for the first time, by way of petition under Article 226 of the Constitution. This writ petition was numbered as : W.P.No.23 of 1994. The relief sought for by the petitioner was that he be furnished a copy of the post mortem report concerning his deceased son, Mr.Kumaresan.

3.4. By an order dated 11.02.2000, this Court disposed of the writ petition with the direction that the post mortem report, be handed over to the petitioner.

3.5. It appears that thereafter, the petitioner approached

the concerned District Collector for being furnished the Revenue Divisional Officer (RDO)'s report (inquest report) concerning his son. The request, in this behalf, was made by the petitioner to the District Collector, apparently, on 08.08.2003.

3.6. The record shows that both the post mortem report as well as the RDO's report (inquest report) were received by the petitioner. Armed with the two reports, the petitioner approached this Court by way of the captioned writ petition, seeking payment of compensation for the death of his son.

3.7. The petitioner claims that his son, Mr.Kumaresan, died in police custody, on account of being tortured by police personnel, and that, his other son, Mr.Saravanan, was an eye-witnesses to the torture. In order to establish that there was a prima facie case for conducting an enquiry and payment of compensation, on account of custodial death, the petitioner relied upon the post mortem report and the RDO's report (inquest report).

4. The learned Single Judge, as indicated above, notwithstanding the period of delay involved, was persuaded to direct enquiry into the death of Mr.Kumaresan, as, according to him, the matter related to custodial death, in police lock-up, which tantamounted to flagrant violation of right to life, as guaranteed under Article 21 of the Constitution.

4.1. However, according to the learned Single Judge, since, such an enquiry would involve examination of witnesses and other documentary material to reach a final conclusion in the matter, he relegated the matter to the Commission. Accordingly, a direction was issued to the Commission to enquire into the petitioner's complaint of violation of human rights. The provisions of Section 12(a) of the 1993 Act, were also adverted to, in this behalf, by the learned Single Judge.

5. The Commission, however, quite, quizzically, has taken umbrage qua the order passed by the learned Single Judge.

6. Mr.Sajeev Kumar, who appears for the Commission, says that such a direction could not have been issued, as it requires the Commission to make an enquiry into an incident, which happened nearly twenty six (26) years ago. Apart from the legality of the issue, we are quite flummoxed as to why the Commission would want to prefer an appeal in a matter such as this.

7. Given the aforesaid circumstances, we are called upon to deal with the legal submissions raised by Mr.Sajeev Kumar, in the context of facts arising in the instant case.

8. Since, Mr.Sajeev's submission veers around Section 36(2) of the 1993 Act, it would help if, one were to extract the said

provision :

"36. Matters not subject to jurisdiction of the Commission—

(1) XXXXX

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

8.1. A bare perusal of Sub-section (2) of Section 36 would show that it prohibits the Commission from enquiring into any matter, after expiry of a period of one year from the date, on which, the alleged act, which involves violation of human rights, is said to have been committed.

8.2. The issue, therefore, before us is : whether the Commission can be called upon to enquire into a case, after a period of more than one year has passed, since, the date, when the alleged incident of violation of human rights occurred ?

8.3. The period of commencement of limitation is more often and than not tied to date of occurrence of the event, which triggers the cause for enabling the aggrieved party to take recourse to an appropriate legal remedy. Therefore, by logical corollary, the cause would arise only, when, the aggrieved party has knowledge of the occurrence. This, of course, would be subject to any deeming fiction that the legislature may incorporate in a given statute. Thus, the period of one (1) year, in our view, can only commence from the date on which the act, which, purportedly, constituted violation of human rights comes to the knowledge of the complainant.

8.4. In this particular case, while, the death of Mr.Kumaresan, occurred on 23.08.1991, the material with regard to the cause of his death surfaced only, when, the post mortem report followed by the RDO's report was furnished to the petitioner.

8.5. As indicated in our narration of facts, the post mortem report was furnished to the petitioner, only upon a direction being issued by this Court in W.P.No.23 of 1994. The direction, in that behalf, was issued on 11.02.2000. In so far as RDO's report is concerned, it was issued only after 08.08.2003. The instant writ petition was filed in 2004.

8.6. Having regard to these dates, we have no manner of doubt that the direction issued by this Court cannot come within the ambit of Section 36(2) of the 1993 Act.

8.7. The petitioner would have obtained knowledge with some certainty as regards the cause of the death of his son, Mr.Kumaresan, only after he had received the RDO's report (inquest report). It is only after the petitioner had an opportunity to compare his son's post mortem report with the

RDO's report, would he have come to a prima facie conclusion that there was a possibility of him having died due to the custodial violence.

9. In these circumstances, the argument that the judgements rendered by the Supreme Court in *Paramjit Kaur V. State of Punjab and others*, (1999) 2 SCC 131 and *N.C.Dhondial V. Union of India and Others*, (2004) 2 SCC 579, could not have been taken recourse to by the learned Single Judge, is an argument, on which, we need not labour any further.

10. We may also note that Mr. Sajeew Kumar, on one hand, says that the said judgements have no application, and on the other hand, he has sought to place reliance on the judgement rendered in *N.C.Dhondial's* case, where the Supreme Court, after noticing its own judgement in *Paramjit Kaur's* case, set aside the direction of the National Human Rights Commission, (in short, "NHRC"), to re-enquire into the alleged incident, on account of the fact that the incident had occurred four and half (4 ½) years prior to the enquiry. As a matter of fact, in this case, in the first round, the NHRC had closed the enquiry. It was only after a review petition was filed, that the Chairperson of the NHRC, sought to reopen the proceedings. It is in this context that the question of limitation came up before the Supreme Court.

10.1. Furthermore, in that case, the concerned Officer, who was a serving CBI Officer, had approached the Supreme Court with a plea that such an enquiry was barred at that stage. In the instant case, it is the Commission, which has approached the Court. Therefore, the aforementioned judgement of the Supreme Court, in our view, is distinguishable on facts.

11. For the foregoing reasons, we find no merit in the petition. The same is, accordingly, dismissed.

12. Consequently, W.A.(SR)No.80613 of 2017, need not be numbered by the Registry. There shall, however, be no order as to costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

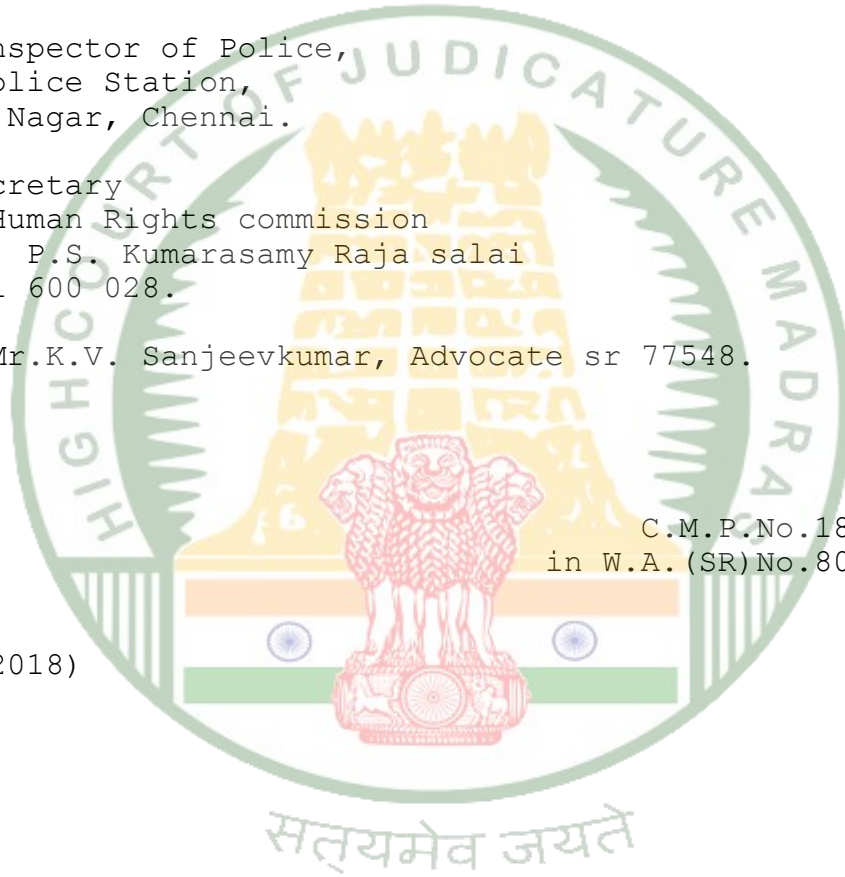
gg

To

1. The Secretary,
Home Department, Secretariat,
Fort St. George,
Chennai-600 009.
 2. The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai-600 008.
 3. The Inspector of Police,
R-3 Police Station,
Ashok Nagar, Chennai.
 4. The Secretary
State Human Rights commission
No 143, P.S. Kumarasamy Raja salai
Chennai 600 028.
- +1 CC to Mr.K.V. Sanjeevkumar, Advocate sr 77548.

C.M.P.No.18465 of 2017
in W.A.(SR)No.80613 of 2017

NRJK(CO)
SP(19/01/2018)



WEB COPY