

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.08.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.17819 of 2017

Sasiya Gowser

.. Petitioner

Vs.

1.The Secretary,  
State Human Rights Commission,  
Thiruvaramam  
No.143, P.S.Kumara Raja Road,  
(Greenways Road), Chennai - 600 028.

2.Mr.Elangovan  
The Inspector of Police,  
F1, Chinthadripet Police Station,  
Chennai.

3.Mr.Chakkaravarthi  
The Sub-Inspector of Police,  
F1, Chinthadripet Police Station, Chennai.

4.Mr.Anbalagan  
The Sub-Inspector of Police,  
F1, Chinthadripet Police Station, Chennai.

5.Mrs.Imagulesan  
The Women Police Constable,  
F1, Chinthadripet Police Station,  
Chennai.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to conduct the enquiry on the petitioner's complaint dated 21.10.2014 in C.C.No.7426/2014 on the file of the 1<sup>st</sup> Respondent in accordance with law and complete the same within the time stipulated by this Court.

For Petitioner : Mr.Abdul Rahman

For R1 : Mr.R.Pratap Kumar

For R2 to R5 : Mr.R.Vijayakumar  
Additional Government Pleader

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner and the Learned Standing Counsel for the 1st Respondent/Commission. By consent, the main Writ Petition is taken up for final disposal.

2.The grievance of the Petitioner is that necessary orders may be passed by this Court in directing the 1st Respondent/Commission to conduct an Enquiry on his complaint dated 21.10.2014 in C.C.No.7426 of 2014 in accordance with Law and to complete the same within a time frame to be determined by this Court.

3.It comes to be known that the Petitioner in his complaint dated 21.10.2014 addressed to the Chairman of the 1st Respondent /Commission and others had prayed for taking necessary action against the concerned Policemen mentioned in the complaint and also sought for an order being passed in regard to the return of Articles/properties which were taken from him. In short, the Petitioner, in his complaint aforesaid, had stated that the action of the Police Department is in violation of Human Rights.

4.It appears that the Petitioner had addressed a representation dated 02.04.2016 and later, addressed another representation on 26.04.2017. In spite of the same, the Petitioner's complaint dated 21.10.2014 and the subsequent representations dated 02.04.2016 and 26.04.2017 had not met with any positive response. Hence, the Petitioner has filed the present Writ Petition.

5.It is to be noted that Section 13 of the Protection of Human Rights Act, 1993, refers to the 'Powers relating to Inquiries' which runs as follows:

"(1)The Commission shall, while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents:

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (24 of 1974), insofar as it may be applicable.

(4) The Commission shall be deemed to be a civil Court and when any offence as it described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974) forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil Court for all the

purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

[(6)Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.]”

6.Indeed, Section 14 of the Protection of Human Rights Act, 1993, deals with 'Investigation'. As per Section 16 of the Protection of Human Rights Act, 1993, the Commission shall give a reasonable opportunity of being heard to a person in the enquiry and to produce evidence in his defence. Even if the reputation of any individual is likely to be prejudicially affected by the Inquiry, then, in that event also, the Commission must provide a reasonable opportunity of being heard to him. After all, the basic principle 'Audi Alteram Partem' which is a 'Rule of Justice'.

7.As a matter of fact, Section 17 of the Act enjoins 'Inquiry into Complaints' which runs as follows:

“17.Inquiry into complaints.- The Commission while inquiring into the complaints of violations of human rights may -

(i)call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that -

(a)if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the

- concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry."

8. Section 18 refers to 'Steps during and after Inquiry'. In fact, after investigation, the Officer or Agency shall submit a report thereon to the Commission within such period as the Commission may prescribe. Moreover, with a view to satisfy itself about the correctness of the facts stated and the conclusion of the Investigation Report, the Commission may make such Inquiry (including the examination of the person or persons who conducted or assisted in the investigation, as it deems fit and proper). Section 20 of the Act speaks of 'Submission of Annual and Special Reports of the Human Rights Commission to the Central Government and to the State Government concerned etc.

9. It is to be borne in mind that the Human Rights Commission can recommend grant of immediate relief to the victim or the members of his families under Section 18(3) of the Protection of Human Rights Act, 1993. When there is a violation of 'Human Rights' at the instance of a public servant or when the public servant miserably failed to prevent the violation of 'Human Rights'. Further, the Human Rights Commissions have an 'Investigation Team' [As per Regulations]. In fact, the interim relief will depend upon the final outcome of the State Liability or guilt of a Public Servant on whose conduct the 'Vicarious Liability of the State arises nor even the proof of a claim in civil Court for Damages.

10. More importantly, the idea of immediate interim relief does not presuppose a proof of Criminal Liability of an Offender/Deviant in a Court of Law as a condition precedent for administration of the reliefs nor does it depend on whether any civil litigation is either pending or prospective. In a democracy, a Welfare State has a primordial obligation to grant 'Relief' to its citizens who are in 'Distress' and in Dire Straits especially those who are victims of violations of their Human Rights by Public Servants.

11. In fact, in our Democratic Politic, 'Judiciary' is the last hope of a hapless citizen. In a case where the liberty of an individual is in peril/stake, certainly, a Court of Law with a view to uphold Human Values, Dignity and to safeguard the rights envisaged under the Constitution is to intervene as a solace.

12.At this juncture, this Court worth recalls and recollects the decision M.P.Human Rights Commission V. The State of M.P. and others, AIR 2003 MADHYA PRADESH 17 at special page 22, wherein it is observed as under:

"16.If the objects and reasons of the statute and the relevant provisions are kept in view, it cannot be said by any stretch of imagination that the Commission cannot canvass the cause of the persons who have lost their eye sight."

13.Considering the fact that the Petitioner's limited prayer and request sought for in the complaint dated 21.10.2014 and the representations dated 02.04.2016 and 26.04.2017 only revolves in a narrow compass, this Court, at this stage, without going into the merits of the matter and not delving deep into the contents of the complaint dated 21.10.2014 and also not expressing any opinion in the subject matter in issue, simpliciter directs the 1st Respondent/Commission to consider the Petitioner's complaint dated 21.10.2014 and the representations of the Petitioner dated 02.04.2016 and 26.04.2017 and to conduct an enquiry as per the 'Scheme of the Protection of Human Rights Act, 1993' and to dispose of the said complaint dated 21.10.2014 and the representations dated 02.04.2016 and 26.04.2017, in an objective and dispassionate manner, by affording necessary opportunity to the Petitioner and other Police Officials are concerned. It is open to the 1st Respondent /Commission to summon the Petitioner and others as per Section 13 of the Protection of Human Rights Act, 1993. The 1st Respondent/Commission shall give a quietus to the complaint of the Petitioner dated 21.10.2014 and the aforesaid representations, by passing a reasoned, speaking order within a period of two months from the date of receipt of copy of this order. Liberty is granted to the Petitioner and others concerned to raise all factual and legal pleas before the 1st Respondent/Commission and to seek redressal of his grievances.

14.With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,  
State Human Rights Commission,  
Thiruvaramangam,  
No.143, P.S.Kumara Raja Road,  
(Greenways Road), Chennai - 600 028.
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F1, Chinthadripet Police Station, Chennai.
  - 5.Mrs.Imagulesan, Women Police Constable,  
F1, Chinthadripet Police Station, Chennai.
- + 2 ccs to Mr. R.Prathapkumar, Advocate Sr.56099  
+ 1 cc to Government Pleader Sr.56415  
+ 1 cc to Mr.SMohamed Ansar, Advocate Sr.55962

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LRS (CO)  
EU 31.08.17

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