

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2017

DELIVERED ON : 24.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.17259 of 2003

MIOT Hospitals
represented by its
Managing Director,
Dr PVA Mohandas
No.4/112, Mount Poonamalee Road,
Manapakkam, Chennai - 600 089.
Petitioner

Vs

1.State Human Rights Commission,
Tamil Nadu,
No.35, Thiru-Vi-Ka Salai
Chennai - 600 019.

2.The Chairman,
Authorisation Committee,
Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.Jaya
W.o.Late Umapathy
(R3 impleaded as per order dated 21.08.2003
in W.P.M.P.22431 of 2003 in W.P.No.17259 of 2003)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records of first respondent relating to Case No.219 of 2003/SS and quash the order dated 14.05.2003 and forbear first respondent from proceeding with the inquiry in Case No.219 of 2003/SS as against petitioner.

For Petitioner : Mr.R.Shanmugasundaram,
senior counsel for Mr.Ramani Natarajan

For Respondents : Mr.M.Nagoor Meeran [R1 & R2]
No appearance [R3]

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

This writ petition seeks issuance of a Writ of Certiorarified Mandamus calling for records of first respondent relating to Case No.219 of 2003/SS, quash the order dated 14.05.2003 and forbear first respondent from proceeding with the inquiry in Case No.219 of 2003/SS as against petitioner.

2. Petitioner is a hospital by name 'MIOT Hospitals'. Petitioner challenges the order of first respondent, State Human Rights Commission, Tamil Nadu, passed in SHRC No.219/2003/SS dated 14.05.2003. Third respondent preferred a complaint before first respondent informing that she entered into an agreement with two persons to sell one kidney of hers to one Vedakannu, who had undergone a kidney transplantation at the petitioner hospital. She alleged that she had been promised Rs.2,50,000/- and the arrangement had the concurrence of Dr.P.Ravichandran, a Nephrologist, who was in charge of the Department for Kidney Disorders and the Institute of Organ Transplantations at the petitioner hospital. Her grievance was that after the organ transplantation operation, she was paid only Rs.40,000/-. Petitioner preferred W.P.No.10629 of 2003 before this Court seeking a Writ of Prohibition against first respondent proceeding with the case. Under orders dated 07.04.2003, this Court informed that the question of jurisdiction of first respondent, raised by petitioner, is to be gone into by first respondent on merits and on the basis of reports. Stating thus, this Court dismissed W.P.No.10629 of 2003. Petitioner, under petition dated 07.05.2003, raised preliminary objections before first respondent u/s.21 and 36(2) of The Protection of Human Rights Act, 1993 [hereinafter referred to as 'Act'] and sought dropping of proceedings by first respondent. Under orders dated 14.05.2003, first respondent dismissed such petition of preliminary objections inter alia informing that the period of limitation of one year from the date on which the Act constituting violation of human rights is alleged to have been committed, provided in Section 36(2) of the Act, would not begin to run till the aggrieved party had discovered the fraud 'with reasonable diligence'.

3. Heard learned senior counsel for petitioner and learned counsel for respondents 1 and 2. Third respondent stands served. There is no appearance for such respondent.

4. Submissions of learned senior for petitioner were two fold. Explaining that petitioner, as a hospital of great repute, has in carrying out organ transplantations, strictly adhered to the Transplantation of Human Organs Act, 1994,

learned senior counsel submitted that petitioner is a private hospital and its activities would not be susceptible to inquiry by first respondent. Learned senior counsel referred to decision of Division Bench of this Court reported in 2005 (2) MWN (Cr.) 46 (DB). We may usefully reproduce paragraphs 17 to 25:

'17. In this connection, the learned senior counsel has invited our attention to Section 12(a) of the said Act, which states: -

" The Commission shall perform all or any of the following functions, namely:-

(a)inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of -

(i)violation of human rights or abetment thereof; or

(ii)negligence in the prevention of such violation by a public servant;"

18. Mr.Dinesh Dwivedi, learned senior counsel, submitted that the words "by a public servant" would govern both sub-clause (i) and sub-clause (ii) of Section 12(a) of the Human Rights Act.

19. On the other hand, Mr.G.Masilamani, learned senior counsel for the Commission, submitted that the words "by a public servant" governs only sub clause (ii) and not sub-clause (i) of Section 12(a) of the Human Rights Act.

20. In our opinion, the submission of Mr.Dinesh Dwivedi appears to be correct, because if we read Section 12 along with Section 18 of the Human Rights Act, whatever ambiguity there may have been in Section 12 of the Human Rights Act gets clarified by Section 18 of the Human Rights Act. Section 18(1) states: -

"The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely: -

(1)where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons"

21. A perusal of Section 18 of the Human Rights Act shows that the Commission can take action in the matter where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant. Thus, the ambiguity, if any, in Section 12(a) of the Human Rights Act gets removed by perusing

Section 18 of the Human Rights Act.

22. This position becomes further clear on a perusal of Form-A of the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997.

Clause 9 of which states: -

" Name, designation and address of public servant, who violated Human Rights or by whose negligence the violation was not prevented (Enter here all the names and addresses if more than one is complained against)"

23. Similarly in Form-I of the National Human Rights Commission (Procedure) Regulations, 1997, it is stated in clause-8: -

" Name, designation and address of the public servant by whom alleged violation of human right was committed/abetted or who was negligent in prevention of such violation:

(i)

(ii)

(iii)

(NOTE: If the complaint relates to Armed Forces, here specifically indicate the Ministry/Department of the Central Government under which such Armed Forces come)

24. Thus, a perusal of the provisions of the Act and the forms annexed to the Regulations clearly indicate that the Human Rights Act deals with violation of Human Rights by a public servant and not others. The petitioner is surely not a public servant, and hence the Human Rights Act will not apply to him at all.

25. It may be mentioned that the expression "public servant" has been defined in Section 2(m) of the Human Rights Act as follows:-

" Public Servant shall have the meaning assigned to it in Section 21 of the Indian Penal Code".'

5. Learned senior counsel further submitted that the operation upon third respondent/complainant was performed on 27.02.2001 and the preference of complaint in the year 2003, was in any event, barred by limitation.

6. Learned counsel for respondents 1 and 2 placing reliance on the counter filed by first respondent submitted that Chapter III of the Act comprising Sections 12 to 16 inform the 'FUNCTIONS AND POWERS OF THE COMMISSION'.

7. Section 2(1)(c) defines 'Commission' as follows:
' 'Commission' means the National Human Rights Commission constituted under section 3.'

8. Learned counsel contended that Chapter V of the Act dealt with the subject of 'STATE HUMAN RIGHTS COMMISSIONS'. The State Human Rights Commissions were required to submit annual reports to the State Government and in urgent cases special reports, which were to be placed before the State Legislature by the State Government along with a memorandum of action taken or proposed to be taken on its recommendations. When the recommendations of the State Commission was not acceptable to it, the State Government was required to inform reasons therefor. Learned counsel submitted that first respondent was only a recommendatory body and there could be no objection to it exercising its powers in respect of petitioner, a private hospital, as hospitals fell with list 2 of the VII Schedule of the Constitution of India. On the question of limitation, learned counsel would reiterate the finding of first respondent that the period of limitation of one year from the date on which the Act constituting violation of human rights is alleged to have been committed provided in Section 36(2) of the Act would not begin to run till the aggrieved party had discovered the wrong doing.

9. We have considered the rival submissions and perused the papers.

10. We find ourselves in respectful agreement with the view expressed in decision of Division Bench of this Court reported in 2005 (2) MWN (Cr.) 46 (DB) to the effect that the Act deals with violations of human rights by public servants and not others. The submission of learned counsel for respondent of the State Human Rights Commissions being merely recommendatory bodies is erroneous. Section 29 of the Act reads as follows:

' 29. Application of certain provisions relating to National Human Rights Commission to State Commissions.- The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to 'Commission' shall be construed as references to 'State Commission';

(b) in section 10, in sub-section (3), for the word 'Secretary-General', the word 'Secretary' shall be substituted;

(c) in section 12, clause (f) shall be omitted;

(d) in section 17, in clause (i), the words 'Central Government or any' shall be omitted.'

Therefore, powers of inquiry and investigation lie with and

procedure there regards applies also to the State Human Rights Commissions. They are also required to comply with Sections 15, 16, 17 and 18 of the Act which provide for certain protection to persons making statements before them, observance of the audi alteram partem rule as also the procedure for inquiry into complaints. It may be noted that sub-section (c) of Section 29 of the Act states that 'in section 12, clause (f) shall be omitted'. It is but to be expected that if the legislature had intended a different purpose for the State Commissions under Section 12(a) of the Act, it would have stated so. Both National and State Human Rights Commissions indeed are recommendatory bodies but not in the manner informed by learned counsel for respondent. Section 18 of the Act inter alia informs such role.

11. Having found that first respondent has no power to inquire into complaints against petitioner, a private hospital, which does not constitute a public servant, it is not necessary to consider the question of limitation but for purpose of completion, we would state that first respondent is in error in informing that the period of limitation of one year from the date on which the Act constituting violation of human rights is alleged to have been committed provided in Section 36(2) of the Act would not begin to run till the aggrieved party had discovered the fraud 'with reasonable diligence', as Section 36 (2) of the Act explicitly is clear that a Commission could not enquire 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 i.e., it is the date of offending act and not the date of discovery thereof which would be determinant on the question of limitation.

The Writ Petition shall stand allowed. The order of first respondent dated 14.05.2003 and proceedings in Case No.219 of 2003/SS shall stand quashed. No costs.

Sd/-
Assistant Registrar

सत्यमेव जयते /TRUE COPY/

Sub Assistant Registrar

gm
TO

1.State Human Rights Commission,
No.35, Thiru-Vi-Ka Salai
Chennai - 600 019.

2.The Chairman,
Authorisation Committee,
Director of Medical Education,
Kilpauk, Chennai - 600 010.

+1 C.C. to Mr.Ramani Natarajan. Advocate SR.No. 74988

Order
in
W.P.No.17259 of 2003

NRI (CO)
T.R (16/11/2017)



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