

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.07.2019	Delivered on 30.07.2019
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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.21587 of 2019

S.Ramesh

...Petitioner

.Vs.

1.The Chairman,
Police Complaints Authority
for Puducherry Union territory,
Chief Secretariat, Puducherry.

2.The Director General of Police,
Police-Head Quarters,
Puducherry,
Puducherry Union territory.

3.The Inspector of Police,
Policing of Police,
SSP C & I Complex,
Puducherry.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 2nd respondent to comply with orders of the Police Complaints Authority dated 22.05.2019, in Complaint No.17/PCA/2019 and take action on the petitioner's complaint dated 10.11.2018 submitted before Inspector of Police, Puducherry, grand Bazaar Police Station, Puducherry, now transferred to the file of the Inspector of Police, Policing of Police, Puducherry within a time frame.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.D.Bharatha Chakravarthy,
Public Prosecutor (Puducherry)

ORDER

This Writ Petition has been filed for a direction to the respondent Police to comply with the orders of the Police Complaints Authority dated 22.05.2019, within a time frame to be fixed by this Court.

2.The petitioner had given a complaint before the respondent Police alleging land grabbing by the accused persons. In spite of the receipt of the complaint, no action was taken by the respondent Police. The petitioner therefore approached the Police Complaints Authority, Puducherry on 07.02.2019, and submitted a petition along with all documents. The Police Complaints Authority by an order dated 22.05.2019, gave the following direction.

10.Hence, in these circumstances, we direct the Director General of Police, Pondicherry, to order for a fresh investigation by deputing an Inspector of Police who has not already dealt with this matter and appropriately take a decision in this matter as per law and, that too, adhering to the well-known case of Lalitha Kumari .Vs. Government of Uttar Pradesh and Others (2013 (6) CTC 353) of the Hon'ble Apex Court in the light of the documents and report compliance within a period of one month from the date of receipt of the copy of this Order.

3.In spite of the directions given by the Police Complaints Authority, since the respondent Police did not act upon the same, the present writ petition has been filed before this Court.

4.The learned counsel for the petitioner submitted that the Police Complaints Authority in Puducherry Union Territory was constituted pursuant to the directions given by the Hon'ble Supreme Court in Prakash Singh case. The powers and functions of the Police Complaints Authority has been clearly specified by the Government of Puducherry in G.O.Ms.No.71 dated 09.12.2016 and updated on 06.01.2017. This Government Order had authorised the Police Complaints Authority to enquire into the petitions filed before it and give appropriate directions to the Police. The respondent Police are duty bound to comply with the directions given by the Police Complaints Authority and it is binding in nature.

5.The learned Public Prosecutor appearing on behalf of the respondent Police submitted that in the present case,

pursuant to the directions given by the Police Complaints Authority, an enquiry was conducted and the dispute was found to be civil in nature and therefore the complaint has been closed.

6.The learned Public Prosecutor raised a larger issue in this case. He submitted that the Police Complaints Authority which was constituted pursuant to the judgment of the Hon'ble Supreme Court in Prakash Singh case can only deal with allegations of serious misconduct by the Police personnel and recommend for departmental action and/or criminal action against the delinquent Police Officer. He further submitted that the Government order was passed by the Government of Puducherry in line with the judgment of the Hon'ble Supreme Court in Prakash Singh case.

7.The learned Public Prosecutor submitted that the Police Complaints Authority cannot give any directions for registration of FIR, further investigation etc., in disputes involving two private parties, and such powers are vested only with a Court under Code of Criminal Procedure. The learned counsel therefore submitted that the direction that was issued by the Police Complaints Authority in the present case is beyond its power and jurisdiction.

8.The learned counsel for the petitioner in reply to the said submission made by the learned Public Prosecutor, submitted that the Police Complaints Authority was formed by the Hon'ble Supreme Court in order to ensure that a supervisory body is required to oversee the functioning of the Police force, till an effective alternative is brought out by the legislature. Therefore, the Police Complaints Authority will have the power and jurisdiction to give directions to the Police, as and when the Police fail to perform their statutory duty.

9.This Court has carefully considered the submissions made on either side.

10.The Hon'ble Supreme Court in Prakash Singh and Others .Vs. Union of India And Others, reported in (2006) 8 SCC 1, was considering Police reforms since the Police Act had become completely outdated and did not contain provisions to deal with the current necessities. The Hon'ble Supreme Court had the opportunity of perusing various reports in this regard and it gave various directions to the Central Government, State Governments and Union Territories for compliance, till the law is framed by the appropriate legislations. For the purpose of the present case, it will be useful to extract Direction No.6 in the order, as under:

"6. There shall be a Police Complaints Authority at the district level to look into

complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority".

11.It is clear from the above direction that the Police

Complaints Authority at the State level/Union Territories was formed to look into complaints against Officers of the rank of Superintendent of Police and above. The State-level Complaints Authority was authorised to take cognizance of only allegations of serious misconduct by the Police personnel, which could include incidents involving death, grievous hurt or rape in Police custody. The recommendations of the Complaints Authority against a delinquent Police Officer shall be binding on the authority concerned.

12. Pursuant to the Judgment of the Hon'ble Supreme Court, the Government of Puducherry passed G.O.Ms.No.71 dated 09.12.2016, constituting a Police Complaints Authority, headed by a retired judge of this Court along with three other members. The powers and functions of the Police Complaints Authority as stated in the G.O., is extracted hereunder:

Powers and Functions

(1) The power of the Police Complaints Authority may be as under:

(i) The Authority may require any person or authority to furnish information on such points or matters, as in the opinion of the Authority may be useful for or relevant to the subject matter of enquiry.

(ii) The Authority, before finalising its opinion, shall give the Police Officer heading the police force in the Union Territory an opportunity to present the Department's view and additional facts, if any, not already in the notice of the Authority and in such cases, the Authority may review its findings on receipt of additional information from the Police Officer heading the police force in the Union Territory that may have a material bearing on the case.

(iii) In the cases directly inquired by the Authority, it may, upon completion of the inquiry, communicate its findings to the police officer heading the police force in the Union Territory with a direction to,

(a) register a First Information Report; and for

(b) Initiate Departmental action based on such findings, duly forwarding the evidence collected by it to the police.

(iv) The directions of the Authority shall ordinarily be binding, unless for the reasons to be recorded in the writing, the Union Territory Administration decides to disagree with the findings of the Authority.

(2) The functions of the Police

Complaints Authority will be as under:-

(i) The Authority shall inquire into allegations of "serious misconduct" against police personnel, as detailed below, either suo moto or on a complaint received from any of the following quarters:-

(a) a victim or any person on his/her behalf.

(b) the National or the State Human Rights Commission;

(c) the police, or

(d) any other source.

Explanation: 'Serious misconduct' for the purpose of this chapter shall mean any act or omission of a police officer that leads to or amounts to,

(a) death in police custody;

(b) grievous hurt, as defined in Section 320 of the Indian Penal Code 1860;

(c) rape or attempt to commit rape;

(d) arrest or detention without due process of law;

(e) extortion;

(f) land/house grabbing; or

(g) any incident involving serious abuse of authority

Provided that the Authority shall inquire into a complaint of such arrest or detention, only if it is satisfied prima facie about the veracity of the complaint.

13. The powers and functions that has been prescribed by the Government order is in line with the judgment of the Hon'ble Supreme Court in Prakash Singh case.

14. The important issue that needs to be addressed by this Court is as to whether this Police Complaints Authority can issue directions to register an FIR under Section 156(3) of Cr.P.C., to conduct further investigation under Section 173(8) of Cr.P.C., etc. It is to be borne in mind that such directions are regularly issued by the Police Complaints Authority in Puducherry, where the disputes are between private parties and one of the private party files a complaint before the Police against another private party. It must also be borne in mind that the Complaints are not against any Police Officer, as

contemplated by the judgment of the Hon'ble Supreme Court in Prakash Singh and Others, referred supra.

15. In the considered view of this Court, the scope of the function performed by the Police Complainants Authority, cannot be taken to such a level, wherein, the authority starts functioning as an alternative to Courts. That is not the purpose for which Police Complainants Authority was constituted by the Hon'ble Supreme Court. The Hon'ble Supreme Court has categorically said that the State-level Complainants Authority would take cognizance of only allegations of serious misconduct by the Police personnel and recommend for taking departmental action and/or criminal action against the delinquent Police Officer. This recommendation is binding on the authority concerned.

16. The Police Complainants Authority owes its existence to the judgment of the Hon'ble Supreme Court in Prakash Singh case and the consequent Government Order passed by the Government of Puducherry. It can act only within the four corners of the authority vested in it. In the considered view of this Court, the power to give a direction to register an FIR or to transfer investigation or to complete the investigation within a particular period or to alter the offence or to direct further investigation or to file a further report, are all matters falling within the jurisdiction of a competent Court, as prescribed under the Code of Criminal Procedure. These powers can never be exercised by the Police Complainants Authority since by exercising such a power, it exceeds its authority and jurisdiction and starts acting like an alternate Court of law. If this goes unchecked, there is a possibility where there can be a clash between the direction given by a Court and a direction given by a Police Complainants Authority. This will lead to unnecessary complications. This Court went into this issue since this Court found a series of directions given by the Police Complaints Authority, Puducherry for registration of FIR, for transfer of investigation, for further investigation etc., and based on those directions, petitions are filed before this Court seeking for implementation of the directions.

17. A copy of this order shall be marked to the Police Complaints Authority and the said Authority shall take note of this order and carry on with its functions within the power and jurisdiction vested in it by the judgment of the Hon'ble Supreme Court in Prakash Singh case and the consequent G.O., passed by the Government of Puducherry.

18.Since the Complaint given by the petitioner has already been enquired and closed, it is left open to the petitioner to work out his remedy in accordance with law.

This Writ Petition is disposed of accordingly. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KP

To

1.The Chairman,
Police Complaints Authority
for Puducherry Union territory,
Chief Secretariat, Puducherry.

2.The Director General of Police,
Police-Head Quarters,
Puducherry,
Puducherry Union territory.

3.The Inspector of Police,
Policing of Police,
SSP C& I Complex,
Puducherry.

4.Police Complaints Authority,
Puducherry Union Territory.

5.The Public Prosecutor,
Puducherry.

+4cc to Mr.P.R.Thiruneelakandan, Advocate SR.No.65255 & 65359

+1cc to The Public Prosecutor,Puducherry SR.No.65671

W.P.No.21587 of 2019

SPD(CO)
GMY(16/08/2019)