HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.501/2016

Sri Jenar Debbarma,
S/O – Himadri Debbarma,
Resident of Village Joyram Modi Para,
P.S. – Lefunga, P.O. – Lefunga, District – West Tripura.

.....Petitioner(s)

Versus

1. The State of Tripura
   To be represented by the Secretary, Department of Home,
   Government of Tripura, New Secretariat Building,
   New Capital Complex, Kunjaban, P.S. – New Capital Complex,
   Agartala, West Tripura, PIN 799006.

2. The Director General of Police,
   Government of Tripura, Fire Brigade Chowmuhani,
   Akhura Road, Agartala, P.S. – West Agartala,
   District – West Tripura, PIN – 799001.

3. The Superintendent of Police,
   Government of Tripura, Fire Brigade Chowmuhani,
   Akhura Road, Agartala, P. S. – West Agartala,
   District – West Tripura, PIN – 799001.

4. Sri Pradip Saha,
   S/O – Madan Mohan Saha,
   ASI of Tripura Police.
   (On 29.09.2013 was posted at Teliamura P.S.)

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, GA.

Along with
W.P.(C) No.1107/2016

Sri Pradip Saha,
Son of Late Madan Mohan Saha,
Permanent resident of Village – Kamalghat,
P.O. & P.S. – Lefunga, District – West Tripura,
Presently residing at Radhamadhab Sarani, Kalyani,
P.O. – Dhaleswar, P.S. – East Agartala,
District – West Tripura, and holding the post of
Assistant Sub-Inspector of Police, Government of Tripura, and
presently posted at the East Agartala Police Station,
Agartala, West Tripura.

.....Petitioner(s)

Versus

1. The State of Tripura, represented by the
   Commissioner & Secretary to the Home Department,
   Government of Tripura, having his office at Capital Complex,
   Gurkhabasti, P.O. – Kunjaban, P.S. – New Capital Complex,
   Sub-Div.- Agartala, District – West Tripura.

2. The Director General of Police,
   Government of Tripura, having his office at
   Police Head Quarters, Fire Brigade Chowmuhani,
   P.O. – Agartala, P.S. – West Agartala,
   Sub-Div.- Agartala, District – West Tripura.

3. The Assistant Inspector General of Police,
   Government of Tripura, having his office at
   Police Head Quarters, Fire Brigade Chowmuhani,
   P.O. – Agartala, P.S. – West Agartala,
   Sub-Div.- Agartala, District – West Tripura.

4. The Under Secretary, Home Department,
   Government of Tripura, having his office at Capital Complex,
   Gurkhabasti, P.O. – Kunjaban, P.S. – New Capital Complex,
   Sub-Div.- Agartala, District – West Tripura.

5. The Police Accountability Commission, Tripura,
   Represented by its Chairman, having his office at
   Shyamalibazar, P.O. – Kunjaban, P.S. – New Capital Complex,

Sub-Division – Agartala, District – West Tripura.

6. Shri Jenar Debbarma, Son of Sri Himadri Debbarma,
Village – Joyram Modi Para, P.O. & P.S. – Lefunga,
District – West Tripura.

.....Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Advocate.

For Respondent(s) : Mr. P. Roy Barman, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing and judgment : 14.12.2020

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Akil Kureshi, CJ).

These petitions are interconnected. They have been heard together and would be disposed of by this common order.

2. Petitioner of W.P. (C) No.501 of 2016, Jenar Debbarma has prayed for the directions to the respondents No.1 to 3 i.e. the State and its authorities to implement the recommendations of the Police Accountability Commission ('Commission', for short) made under its order dated 23.02.2015. The petitioner has also prayed for further direction to the said respondents to pay a sum of Rs.5,00,000/- by way of compensation for

custodial torture of the petitioner by respondent No.4, who was at the relevant time posted as ASI, Ramnagar Police Outpost. According to the petitioner Jenar Debbarma, on 03.12.2010 had an altercation with Suman Sarkar in a market place. The police constable on duty took both of them to Ramnagar police outpost where the respondent No.4 kept Jenar Debbarma in police lock up without registering any criminal case. During this period, he was also assaulted and beaten up which resulted into speech and hearing impairment to the extent of 43%.

3. The wife of Jenar Debbarma had filed a complaint before the Commission alleging police torture in custody and illegal detention. On this complaint, the Commission passed a detailed order on 19.12.2012. Several witnesses were examined and the broad conclusions of the Commission were that respondent No.4, Pradip Saha, who was the ASI posted in the said police outpost, on the date of incident had taken Jenar Debbarma in custody without arrest and without recording of any case against him. He was also subjected to physical torture in police custody. He was not provided medical treatment. The Commission recommended various steps in the said report, relevant portion of this report reads as under:

"11. The upshot of the above lead us to observe as follows:-

(i) Jenar was taken to custody without arrest. As no case registered against him the detention was illegal;

(ii) Pradip Saha, A.S.I., subjected him to physical torture in custody which was gross violation of law, particularly the Police guideline on arrest and physical torture;

(iii) The police officers of the outpost did not take any step for medical treatment of the victim. On the contrary Pradip Saha threatened that if the victim was taken to any hospital for treatment he would be booked as extremist and serious consequence would follow. The O.C. of the out-post should have reprimanded Pradip Saha and made all arrangement for medical aid of the victim;

(iv) Himadri Debbarma, the father of the victim was himself a police constable. Instead of filing F.I.R. against Pradip Saha he preferred to submit representations to the Director General of Police and the Superintendent of Police, West, for justice. Though a departmental proceeding was initiated on his prayer, no formal procedure was followed. The accused was simply summoned to orderly room and censured. No witness was examined and no information was given to the complainant or the victim about the proceeding violating thereby section 72(3) of the Police Act;

(v) A criminal case should have been registered immediately after receipt of the complaint from Himadri Debbarma. The Superintendent of Police, West, informed us that a case was registered much in favour of the victim Jenar Deb Barma payable by Pradip Saha. The appropriate authority of the Police Department may ensure payment of the amount in such manner as it may consider appropriate.

12. As a criminal investigation is pending we are not giving any direction under sub-section (1) of section 70. The progress or fate of the

investigation should, however, be communicated to us. We recommend payment of compensation under sub-section (2) of section 70. Our finding along with copy of the evidence recorded/collected during inquiry may be forwarded to the Director General of Police and Secretary (Home)."

4. Respondent No.4, Pradip Saha challenged the said report of the Commission by filing W.P. (C) No.284 of 2013, which was disposed of by a Division Bench by judgment dated 16.12.2013. It was noticed that cross-examination of important witnesses was not allowed, which was fatal to the proceedings. The Court, therefore, provided as under:

> "7. Therefore, on this short ground, we are of the opinion that the order of the Police Accountability Commission, respondent no.4 cannot be sustained. The same is accordingly set aside. It is for the Police Accountability Commission to decide whether it wants to reopen the matter and if it decides to do so then it must give the petitioner an opportunity of not only cross-examine the witnesses but an opportunity to lead his own evidence and put forth his views on the case.
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> With these observations the writ petition is disposed of."

5. The Commission thereafter conducted further proceedings pursuant to the complaint of the wife of Jenar Debbarma and passed a fresh order on 23.02.2015, which reads as under:

> "O R D E R
> Dated – 23-02-2015.
>
> By Order dated 19-12-2012 this Commission closed the proceeding with several observations in Para – 11 thereof. In Sub-

> para (viii) of that Para we recommended payment of compensation of Rs.50,000/- in favour of the victim Jenar Debbarma who was illegally detained and physically tortured in custody by Pradip Saha, A.S.I. of the Ramnagar Police out-post though there was no criminal case against him. In a departmental proceeding initiated on a prayer of victim's father he was found guilty and awarded the penalty of censure which was, however, not challenged by him in any Forum. Our recommendation for compensation was put under challenge by Shri Saha in a Writ petition before the Tripura High Court in W.P. (C) No.284 of 2013. In terms of the directions in Para-7 of the Judgment of the High Court the Commission afforded opportunity to him to cross-examine the witnesses and lead his evidence. After appreciation of the evidence recorded afresh and consideration of the finding in the DP, we are of the view that Pradip Saha being solely responsible for illegal detention and custodial torture rendering the victim partially disabled, an amount of Rs.50,000/- as compensation should be paid to the victim. We make this recommendation to the State Government under section 70(2) of the Tripura Police Act, 2007."

6. This order of the Commission dated 23.02.2015 has given rise to these two petitions. Jenar Debbarma has prayed for the directions for carrying out the recommendations of the Commission of payment of Rs.50,000/- to him by way of compensation. The ASI concerned Pradip Saha has filed W.P. (C) No.1107 of 2016 challenged the said order of the Commission.

7. Appearing for Jenar Debbarma, learned counsel, Mr. P. Roy Barman submitted that the Commission had carried out a detailed inquiry. On the strength of statements of witnesses, the Commission had come to a clear finding that ASI Pradip Saha had detained the petitioner in police lock up illegally during which time he was physically tortured and assaulted. The Government should be first to pay Rs.50,000/- to the petitioner which may be recovered from the concerned ASI.

8. On the other hand, learned counsel, Mr. Somik Deb, appeared for Pradip Saha. He challenged the very order of the Commission submitting that the recommendations made are beyond the purview of the Commission's powers. He drew our attention to the relevant provisions contained in the Tripura Police Act, 2007 ('the Act', for short).

9. Before adverting to the statutory provisions, we may recall, in the previous report dated 19.12.2012, the Commission had made detailed observations and also issued certain directions. However, this report of the Commission was set aside by the High Court in the judgment dated 16.12.2015 whereupon the Commission passed a fresh order on 23.02.2015 after allowing Pradip Saha to cross-examine the witnesses. This order was confined to making a recommendation to the Government for payment of compensation of Rs.50,000/- to the victim. This was on the

basis of the Commission's reiteration of its earlier opinion that Pradip Saha was solely responsible for the illegal detention and custodial torture to the victim. Our inquiry, therefore, would be confined to testing the legality of this limited order of the Commission.

10. The said Act was enacted by the State legislature *inter alia* to redefine the role, duties and responsibilities of police service and to enable the police to function as an impartial, efficient, effective, people friendly and responsive agency in order to enable it to carry out the Constitutional objectives of protection of civil, political, social and economic rights of citizens. Chapter-VIII of the said Act pertains to Police Accountability. Section 58 contained in Chapter-VIII provides that in addition to existing mechanisms, and functions, duties and responsibilities of departmental authorities, accountability of the police shall be further ensured through the additional mechanism detailed in the said chapter. Section 59 of the Act enjoins a duty of the State Government to establish a State-level Police Accountability Commission to inquire into public complaints against the police personnel of serious misconduct which Commission would perform such other functions as stipulated in the said Chapter. Section 60 of the Act pertains to Composition of the Commission. As per the said provision, the Commission would consist of 5 members. Chairman of the Commission

would be a retired Judge of the High Court. Section 66 pertains to function of the Commission and reads as under:

"66. **Function of the Commission**:

(1) The Commission shall forward for further action the complaints of misconduct received directly by it to the Director General of Police.

(2) The Commission 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:

(a) a victim or any person on his 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 Indian Penal Code , 1860;
(c) rape or attempt to commit rape;
(d) arrest or detention without due process of law ; or
(e) violation of human rights ;
(f) allegation of corruption.

(3)The Commission may also inquire into any other case referred to it by the Director General of Police if, in the opinion of the Commission, the nature of the case merits an Independent Inquiry;

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(4)The Commission may monitor the status of departmental inquiries or departmental action on the complaints "misconduct" against gazetted officers through a quarterly report obtained periodically from the Director General of Police, and issue appropriate advice to the police department for expeditious completion of inquiry, if in the Commission's opinion the departmental inquiry or departmental action is getting unduly delayed in any such case;

(5) The Commission may also call for a report from, and issue appropriate advice for further action or, if necessary, a direction for a fresh inquiry by another officer, to the Director General of Police when a complaint, being dissatisfied by the out come of or inordinate delay in the process of departmental inquiry into his complaint of "misconduct" as defined above, by any police officer, brings such matter to the notice of the Commission; and

(6) The Commission may lay down general guidelines for the state police to prevent misconduct on the part of police personnel."

11. Section 67 pertains to powers of the Commission. Under this provision, the Commission is granted certain powers to carry out its functions such as the powers of a civil Court while trying a suit under the Code of Civil Procedure. The Commission would be deemed to be a civil Court and when an offence, as defined in Sections 175, 178, 179,180 or 228 of IPC is committed in view of presence of the Commission, it would be open for the Commission to forward the case to a Magistrate. Proceedings before the Commission would be deemed to be judicial

proceedings within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code. Section 69 provides that if, at any stage of the inquiry, the Commission considers it necessary to inquire into the conduct of any person, or is of the opinion that reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his support. Section 70 of the Act pertains to decisions and directions of the Commission and reads as under:

> "70. **Decisions and Directions of the Commission** :
>
> (1) In the cases directly inquired by the Commission, it may, upon completion of the inquiry, communicate its findings to the Director General of Police and the State Government with a direction to :
>
> (a) register a First Information Report ; and/ or
>
> (b) initiate departmental action based on such findings,
>
> Duly forwarding the evidence collected by it to the police.
>
> *Provided that* the Commission, before finalizing its own opinion in all such cases shall give the Director General of Police an opportunity to present the department's view and additional facts, if any, not already in the notice of the Commission:
>
> *Provided further that*, in such cases, the Commission may review its findings upon receipt of additional information from the Director General of Police that may have a material bearing on the case.

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(2) The commission may also recommend to the State Government payment of monetary compensation by the government to the victims of the subject matter of such an inquiry."

12. Sub-Section (1) of Section 73 provides that all police officers and authorities shall refer all allegations of "serious misconduct" against police personnel, coming to their notice, to the Commission.

13. From the provisions noted above, it can be seen that under sub-Section (2) of Section 66 of the Act, the Commission would inquire into allegations of serious misconduct against police personnel either *suo moto* or on a complaint received from the concerned quarter. Term "serious misconduct" has been explained in the explanation to sub-Section (2) of Section 66. Under sub-Section (3) of Section 66, the Commission may also inquire into any other case referred to it by the Director General of Police if, in the opinion of the Commission, the nature of the case merits an independent inquiry. Under sub-Section (4) of Section 66, the Commission may even monitor the status of a departmental inquiry or departmental action on complaints of "misconduct" against a gazetted officer during course of which the Commission may issue appropriate advice to the police department for expeditious completion of inquiry. Thus, the powers of the Commission to inquire into various aspects of functioning of the police department are very wide. However, when it comes to the action

that the Commission may take upon such inquiries, one would have to advert to Section 70. Under sub-Section (1) of Section 70, in cases directly inquired by the Commission, upon completion of the inquiry, the Commission would communicate its findings to the Director General of Police with a direction to (a) register an FIR and/or (b) to initiate departmental action based on such findings. Under sub-Section (2) of Section 70, the Commission may also recommend to the State Government payment of monetary compensation by the Government to the victims of the subject matter of such an inquiry.

14. In the present case, the Commission has not exercised powers under sub-Section (1) of Section 70 of asking the State Government to register an FIR or to initiate departmental proceedings against any of the officers. The direction for payment of compensation is purportedly in exercise of powers under sub-Section (2) of Section 70. Essentially, the Commission was of the opinion that the ASI Pradip Saha had acted illegally in his personal capacity and therefore he should bear the burden of paying compensation to the victim and accordingly, made observations and recommendations to the Government. In our opinion, no such recommendations so as to bind the police officer could have been issued under sub-Section (2) of Section 70 of the Act. Firstly, sub-Section (2) uses the expression recommendation to the State Government. The question of any such recommendation being

binding or not would immediately arise. Learned counsel Mr. P. Roy Barman may be correct in pointing out that in the present case, this question may not be threshed out since the Government decided to accept the recommendation of the Commission. However, if his recommendation of the Commission is to be seen as one requiring the ASI to pay the compensation, the question of such recommendation being accepted by the State Government becomes irrelevant. Surely, the State Government cannot accept the recommendation which is adverse to an individual. ASI Pradip Saha was aggrieved by such recommendation and has therefore challenged it by filing an independent petition. In our opinion, the Commission could not have issued such a recommendation in exercise of powers under sub-Section (2) of Section 70 of the Act since the Commission could only have recommended payment of compensation by the Government which in the present case, the Commission has not. Though not seriously argued before us, since there is a prayer for payment of compensation of higher amount, we must record that in absence of detailed material of clinching evidence of illegalities committed by a concerned police officer, in exercise of writ jurisdiction, no such directions can be issued.

15. In the result, W.P.(C) No.501 of 2016 filed by Jenar Debbarma is dismissed. W.P. (C) No.1107 of 2016 filed by Pradip Saha is allowed.

Impugned order of the Commission is set aside. If the State Government has initiated any steps in consequence of the said order, the same would also stand invalidated.

16. Petitions are disposed of accordingly. Pending application, if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

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