

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.41993 of 2021

State of Odisha & Anr.

Petitioner(s)

Mr. S.P. Panda,
Additional Government Advocate

-versus-

Parameshwar Mahanta

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
04.02.2022**

Order No.

01. **1.** This matter is taken up by video conferencing mode.
- 2.** This writ petition involves a challenge to the order dated 8.03.2021 passed by the National Human Rights Commission in a Case No.4082/18/7/2017.
- 3.** Mr. Panda, learned State Counsel assails the direction part in the impugned order dated 8.03.2021 passed by the Human Rights Commission thereby instead of recommending straightway directing the Chief Secretary to release a some of Rs.2,00,000/- (rupees two lakhs) in favour of the next of kin (NOK) of the deceased victim. Referring to the provision at Section 18 of the Protection of Human Rights Act, 1993 hereinafter in short be reflected as “the Act, 1993” Mr. Panda, learned State Counsel contended that once the Commission

has come to close an inquiry, it may at best take steps in the manner prescribed U/s. 18 of the Act, 1993. Coming to the direction portion Mr. Panda, learned State Counsel reading through the Section 18(4)(i) of the Act, 1993 claimed that in the worse the Commission could have recommended and directed to the Government. It is, at this stage of the matter, taking this Court to the direction part Mr. Panda, learned Addl. Govt. Adv. Contended that since the Commission has the authority to recommend, it cannot issue direction. It is, in the above background of the matter and taking help of the provision referred to hereinabove Mr. Panda, learned Addl. Govt. Adv. claims for interfering in the impugned order and setting aside the same.

4. Considering the submission made by Mr. Panda, learned Addl. Govt. Adv. and since there is relevancy to the provision at Section 18(a)(i) of the Act, 1993, this Court takes note of the said provision as hereunder :

“18. Steps during and after inquiry :- The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

- (a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority-
 - (i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
 - (ii) to initiate proceedings for prosecution or such other suitable action as the Commission may

deem fit against the concerned person or persons;

- (iii) to take such further action as it may think fit;
- (b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;
- (e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.”

5. On close reading of the aforesaid provision this Court finds, for the language used therein, the Commission is authorized to take any of the steps prescribed therein or upon completion of inquiry as indicated hereinabove more particularly keeping in view the development taken place in the proceeding involved herein, the Commission may take

steps in the manner prescribed U/s.18(a)(i) of the Act, 1993. A close reading of the aforesaid provision this Court also finds, the Commission is within his authority to take steps even recommending for making payment of compensation or damages to the complaint or to the victim or to the members of the family, by the concerned Government or authority. On close reading of the provision at section 18(A) of the Act, 1993, this Court finds, the direction, if any, to be issued by the commission should be in the nature of recommendation. In the circumstance, this Court here takes note of the ultimate direction of the Commission, which reads as follows :

“ The Commission has considered the material placed on record. As already Commission has stated earlier that it's the duty of State Govt. Hospital to attend their patient appropriately and provide all necessary medical care to them. Further when patient was referred from DHH Keonjhar to SCB Cuttack then there must be a prior communication in this regard and SCB Cuttack must be prepared to attend the patient accordingly. However, in this case when the patient arrived to SCB Cuttack, no bed was found to be arranged for the patient in the ICU, as the prior information must be with SCB Cuttack, in case if no prior information to SCB, Cuttack then it's the fault of DHH Keonjhar. Hence, in this case the gross negligence is apparent on part of Govt. hospitals, as they have not taken seriously the situation & health of patient , leading to which the patient failed to get the rightful treatment from govt. hospitals even after struggling & spending lot of time for getting the same. Hence in the end the patient has to look at the other option for getting the treatment but by the time it's too late and she died. Therefore Commission again directs Chief Secretary, Govt. of Odisha has to release amount to Rs.2,00,000/- to the NOK of the deceased victim i.e. Basanti Mahanta W/o. Parameswar Mahanta R/o. Dhudurapal, P.O.-Maidankel, Via.-Naranpur, P.S.-Sadar, Dist.

Keonjhar, Odisha and submit a report along with proof of payment to the commission within six weeks.”

6. On reading of the aforesaid order, it appears, the Commission in exercise of power U/s.18(a) (i) of the Act, 1993 instead of recommending for making the payment of compensation in favour of the NOK, has given a direction for the said purpose, which is not permissible under the provision of Section 18(a)(i) of the Act, 1993. For the interference of this Court partially interfering in the order to bring it to the fold of Section 18(a)(i) of the Act, 1993, the amount since to be released in favour of the NOK, this Court finding the NOK not likely to be prejudiced, declines to issue notice to the NOK and disposes of the writ petition at the admission stage.

7. In the above circumstances, while disposing of the writ petition with modification as indicated hereinabove following provisions at Section 18 of the Act, 1993, the competent authority shall report compliance of the recommendations on payment of Rs.2,00,000/- to the NOK at least by completing the entire exercise within a period of nine months from the date of communication of an authenticated copy of this order. A copy of this order be served on Mr. Panda, learned Additional Government Advocate for communication purpose.

8. With the aforesaid direction the writ petition stands disposed of.

9. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court’s website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court’s Notice No.4587, dated 25th March, 2020 as

modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide memo Nos.514 & 515 dated 7th January, 2022.

(Biswanath Rath)
Judge

Ayaskanta Jena

