

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13188 of 2012

Dr.Lalit Mohan Sharma Son Of Ramanuj Sharma Resident Of Village-
Raghopur, P.S. Bihta, District- Patna

... .. Petitioner/s

Versus

1. Bihar Human Rights Commission and Anr 9 Bailey Road, Patna 15 Through
Its Secretary
2. Sanjay Kumar Singh S/O Birendra Prasad Singh Resident Of Village And
P.O. Bishunpura Bazidpur P.S. Bihta District Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dhirendra Kumar
For the NMC	:	Mr.Kumar Priya Ranjan, Sr. SC
		Mr. Sandeep Kumar
		Mr. Vibhuti Kumar
		Mr. Sudarshan Bharadwaj

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 06-03-2024

Heard the parties.

2. This writ petition has been filed on behalf of the petitioner for quashing the order dated 13.06.2012 passed by the Bihar Human Rights Commission in File No. BHRC/Comp. 957 of 2011 which was communicated to the petitioner vide Memo No. 7032 dated 15.06.2012 issued under the signature of Deputy Secretary of Bihar Human Rights Commission by which the Bihar Human Rights Commission has directed the petitioner to pay compensation of Rs. 1,00,000/- to the respondent no. 2.

3. The facts of this case in short are that the respondent no. 2 got operated by the petitioner at his clinic for



Hydrocele ailment. After operation the respondent no. 2 was discharged and was asked to visit the clinic again after 4 days for dressing purpose. After four days of being discharged, the respondent came to the clinic of the petitioner for dressing and during dressing he felt a lot of pain and when he touched the operated area he felt that his both testes were missing and regarding the same the respondent no. 2 enquired from the petitioner. The petitioner explained to the respondent no. 2 that both his testes have been impacted above and after filling of the wound, the testes would come back to its normal position but when the condition of respondent no. 2 did not improve, he visited another doctor at Patna who, upon relevant tests found that both the testes of respondent no. 2 were missing. It is alleged by the respondent no. 2 that for the purpose of organ trading the petitioner has taken out his testes.

4. It is the case of the petitioner that the respondent no. 2 came to his clinic complaining of acute pain due to the enlargement of his Hydrocele and the petitioner, after conducting all pathological tests has suggested to the respondent no. 2 to undergo surgery. The surgery was carried out and the respondent no. 2 was advised to remain under the supervision of the doctor for the next two days but the respondent no. 2 left the



hospital on the same day with his friend on a motorcycle without taking the permission of the petitioner. On the next day, a relative of respondent no. 2 came to the petitioner with his prescription and requested the petitioner to prescribe some medicines as the respondent no. 02 was facing continuous pain and bleeding from the operated area. Thereafter, the respondent no. 02 himself came to the clinic of the petitioner and upon examination the petitioner found that blood was coming out from his Hydrocele and upon further examination it was found that the right testicle of respondent no. 02 was ruptured and other testicle was also infected and to save the life of the respondent no. 02 the petitioner operated him and removed the testicles from his body.

5. Learned counsel for the petitioner has submitted that with the allegations of organ trading, the respondent no. 02 has registered an FIR bearing Bihta P.S. Case No. 47 of 2011 but the police after investigation has submitted final form in favour of the petitioner. He further submits that the respondent no. 02 has also filed a protest-cum-complaint petition in the Court of learned ACJM, Danapur after submission of the final form by the police which was also dismissed by the learned ACJM, Danapur.



6. Learned counsel for the petitioner further submits that when the police and the competent criminal Court has not found the petitioner guilty then the Bihar Human Rights Commission shall not have entertained the complaint of the respondent no. 02 as the allegations levelled in the complaint do not show that the Human Rights of the petitioner are being violated.

7. Learned counsel for the petitioner has further submitted that in the course of investigation of Bihta P.S. Case No. 47 of 2011, the respondent no. 02 was examined by the medical board consisting of four doctors and they have found that the testes of the petitioner were removed but it was made clear by the board that there is no organ trading in respect of testes. It has also been submitted by the learned counsel for the petitioner that even though, the primary allegation of organ trading was found to be untrue, the Human Rights Commission has not only entertained the complaint of the respondent no. 02 but also have ordered for payment of compensation to the respondent no. 02 which is illegal.

8. The respondent no. 2 had filed a complaint case being Complaint Case No. 197 of 2013 in the District Consumer Dispute Redressal Forum which was dismissed on 30.06.2018.



The respondent no. 2 thereafter preferred an appeal being Appeal No. 296 of 2018 before the State Consumer Dispute Redressal Commission which was allowed and the State Consumer Dispute Redressal Commission found that there is deficiency in service of the petitioner and for the same the State Consumer Dispute Redressal Commission has imposed a composite compensation of Rs. 20,000/- upon the petitioner. The petitioner has challenged the order of the appeal in revision being Revision Petition No. 654 of 2022 before the National Consumer Dispute Redressal Commission, New Delhi which is still pending.

9. It has further been submitted by the learned counsel for the petitioner that the petitioner is a competent doctor and there was no mistake in performing surgery of respondent no. 02 on his part and the award passed by the Chairman, Bihar Human Rights Commission is completely in violation of his jurisdiction as he is not the competent authority to pass an award for compensation.

10. In support of his submissions, learned counsel for the petitioner relies upon Paragraph 21 of the judgment of Chhattisgarh High Court given in the case of ***Chhattisgarh State Electricity Board Vs. Chhattishgarh State Human Rights***



Commission and Ors. reported in **AIR 2018 CHH 53**. It would be relevant to quote Paragraph 21 of the aforesaid judgment:-

"In view of the aforesaid principle of law laid down by the Supreme Court in the above-stated judgments (supra), if the facts of the present case are examined, it is quite vivid that the Human Rights Commission is a recommendatory body and it only makes a recommendation to the concerned authority or Government for enforcement of its recommendation. It has no jurisdiction to pass an order directing payment of compensation, therefore the impugned order is vulnerable to the extent of directing payment of compensation."

11. In the counter affidavit filed by the respondents, the respondents have supported the impugned order passed by the Bihar State Human Rights Commission.

12. I have heard and considered the submission of the parties.

13. Section 12 and 18 of The Protection of Human Rights Act, 1993 read as follows:-

12. Functions of the Commission. -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 [or on a direction or order of any Court], into complaint of-
(i) violation of human rights or abetment thereof, or
(ii) negligence in the prevention of such violation by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;

[(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State



Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;]

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

[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.

14. From reading the provisions of Section 18 of The Protection of Human Rights Act, 1993 and also in the Judgment of ***Chhattisgarh State Electricity Board Vs. Chhattishgarh State Human Rights Commission and Ors. (Supra)***, it is held that the Human Rights Commission is only empowered to make a recommendation and it cannot adjudicate and thereafter pass an order for payment of compensation. Its powers are codified in Section 18 of The Protection of Human Rights Act, 1993 and the State Government and the Authorities are obliged to consider the recommendation of the Commission



in accordance with law, meaning thereby that the State Human Rights Commission is a recommendatory body and it can make recommendations only to the concerned State Governments or its officials for enforcement of its recommendations. The Bihar State Human Rights Commission could not have passed an order directing for payment of compensation to the complainant.

15. In view of the above discussions, the order dated 13.06.2012 passed by the Bihar Human Rights Commission in File No. BHRC/Comp. 957 of 2011 granting compensation, is hereby quashed.

16. The Indian Medical Association has also found no fault with regard to the action of the petitioner and in these circumstances, considering the report of the Indian Medical Association, the other recommendation/s of Bihar Human Rights Commission with regard to taking action against the petitioner is also hereby set aside.

17. With the aforesaid directions, this application stands allowed.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.3.2024

