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crwp276.21

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 276 OF 2021

Chandrakant Dashrath Vadgule .. Petitioner
Age. 72 years, Occ. Agri.,
R/o. Mouje Taklibhima, Tal. Shirur,
Dist. Pune, Pin – 412208.

Versus

1. The State of Maharashtra .. Respondents
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The Director General of Police,
Maharashtra State, Mumbai.
3. Special Inspector General of Police
Nashik Division, Nashik.
4. The Superintendent of Police, Ahmednagar.
5. The Police Inspector Bhingar Police Station
District – Ahmednagar.

Mr.Z.M. Pathan, Advocate for the Petitioner.
Mr.S.S. Dande, APP for the Respondent/State.

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
DATED : 02.05.2024

ORAL JUDGMENT [PER : MANGESH S. PATIL,J.] :-

01. Heard both the sides and perused papers.
02. Rule.
03. The Petitioner is seeking implementation of the decision of the State Human Rights Commission, taken under section 18(e) of the Protection of Human Rights Act, 1993, whereby for the reasons discussed in the order, he was found entitled to claim compensation of Rs.2 lakh and the State was directed to pay him those damages within six weeks, failing which there was direction to pay interest @ 12.50% till realization of the amount. The Petitioner was merely paid Rs. 10,000/-.
04. The issue apparently is no more *res integra*. In a similar fact situation, a co-ordinate division bench of which one of us [Mangesh S. Patil,J.] was a party, in the matter of Shivdas s/o. Madhavrao Barse Vs. The State of Maharashtra & Ors., had an occasion to consider similar fact situation. By order dated 25.04.2020, the division bench had directed the State to comply

with the decision of the State Human Rights Commission to the fullest. In that case as against the directions to pay to the petitioner compensation of Rs. 5 lakh within stipulated time and on failure, to pay it with interest, the petitioner was merely paid Rs. 50,000/-.

05. Admittedly, the Respondent - State machinery has not put up any challenge to the decision of the State Human Rights Commission, of which the implementation is being sought. Consequently, no enquiry into the facts and law leading to the decision can be undertaken in this writ petition, when the State has not preferred to challenge it. Only logical consequence would be for the State to implement the directions.

06. The issue has even been considered in great detail in full bench decision of the Madras High Court in the matter of **Abdul Sathar Vs. Principal Secretary to the Government and Others, 2021 SCC OnLine Mad. 16611**. The observations in paragraph Nos. 490 would be relevant and would read as under :-

“490. In the conspectus of the above disclosure, the following is our summation to the terms of the Reference :

“(i) Whether the decision made by the State Human

Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?

Ans : The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub-Clause (e) of Section 18. Therefore, the recommendation of the H.R. Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act.

“(ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances?

Ans : As our answer is in the affirmative in respect of the first point of Reference, the same holds good for this point of Reference as well. We having held that the recommendation is binding, the State has no discretion to avoid implementation of the recommendation and in case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

“(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have

been found to be responsible for causing such violation?

Ans : Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a)(i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

xxxxxx”

07. The Writ Petition is allowed. The Respondents are directed to pay remaining amount of compensation of Rs.1,90,000/- [Rupees One Lakh Ninety Thousand] to the petitioner within a period of three weeks. The amount shall carry interest as directed by order of the State Human Rights Commission.

08. Rule is made absolute in above terms.

[SHAILESH P. BRAHME,J.]

[MANGESH S. PATIL,J.]